

SHAKESPEARE, THE LAND LAW, AND THE INDIVIDUAL:  
THEIR EMERGENCE IN ELIZABETHAN ENGLAND

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## **ABSTRACT**

Through the prisms of William Shakespeare's life and work and Elizabethan land law, this thesis not only (a) suggests that the sixteenth century witnessed the simultaneous rise of the individual and the creation of the English state, but also (b) identifies the chance confluence of several forces that led to personal freedom on the one hand and a national unification on the other. Shakespeare benefited personally from the individuation and the nation-building and wrote professionally about them.

In the fourteenth century, the Black Death decimated the English population. The shortage of agricultural labor gave serfs bargaining power and ultimately freedom. The social change flattened the historically hierarchical society whose foundation was no longer a lineage society but rather a civil society. The fundamental economic consequence was the conversion of land from a measure of prestige to a commodity whose value lay in its productivity. All these matters were exacerbated by the enclosures which led to further social dislocation and monetization of land. The process of individuation was abetted by the diminished role of the church in the religious lives of its adherents and the displacement of the earth from the center of the universe.

Shakespeare's professional life and business dealings were facilitated by these changes in Elizabethan life. He enjoyed an unprecedented freedom of association in his acting companies and opportunities to acquire land. In these arenas, the land law played

an important role. Shakespeare made frequent references to that law and the lawyers who practiced it.

In fact, Shakespeare's family was embroiled in litigation that epitomized an aspect of individuation: the ability of one court to overrule the decision of another based on conscience or differing ideas of right and wrong.

Although national unity and individuation seem contradictory, they are reconciled by Adam Smith's notion of the "invisible hand" by which individual pursuit of self-interest yield unintended benefit to the national economy.

The form and content of this abstract are approved. I recommend its publication.

Approved: Omar Swartz

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# CHAPTER I

## INTRODUCTION

In *The Political Theory of Possessive Individualism: Hobbes to Locke*,<sup>1</sup> C.B.

Macpherson observed that in the seventeenth century “The individual was seen neither as a moral whole, nor as part of a larger social whole, but as an owner of himself;” he called this view “possessive individualism.” Because his attention was given to the political theories of John Locke and Thomas Hobbes, Macpherson did not address the reasons for the rise of possessive individualism. Those reasons may be surmised from a confluence of several forces in the sixteenth century: the lingering effects of the Black Death in the fourteenth century; the collapse of a social hierarchy; the diminished role of the church; and the monetization of land. At the same time, England was founding its nationhood. Macpherson’s thesis and England’s identity can be considered in the life and works of William Shakespeare and the workings of Elizabethan land law. Although individuation and national unity seem contradictory, they are reconciled by Adam Smith in *An Inquiry into the Nature and Causes of the Wealth of Nations* (1776) who proposed the “invisible hand” by which the individual’s pursuit of wealth led unintentionally to the creation of national wealth.

## CHAPTER II

### ENTERING THE ELIZABETHAN ERA

#### A. The Black Death

##### 1. Consequences

Since the Norman Conquest in 1066, the English feudal social and economic structure had been based upon the hierarchical relationship among men with the king at the top and villeins at the bottom. All of them were bound by their shared interests in the land that the conquering King William had granted to his family and favorites. The land was not merely a measure of wealth but also the organizing force of governmental, social, and economic life:

From the earliest settlements until the industrial revolution the economic basis of society was agrarian. Land was wealth, livelihood, family provision, and the principal subject matter of the law. . . . [L]and was also government and structure of society.<sup>2</sup>

The bonds were also intensely personal. Upon his investiture, a lord swore a profession of faith (or *fealty*) and *homage* to the king or his overlord

openly and humbly kneeling, being ungirt, uncovered, and holding up his hands both together between those of the lord, who sate before him; and there professing that “he did become his *man*, from “that day forth, of life and limb and earthly honour” and then received a kiss from his lord.<sup>3</sup>

In the aftermath of the Black Death (or bubonic plague), which took twenty to thirty percent of the population in the middle of the fourteenth century,<sup>4</sup> there was much less demand for land and much greater demand for labor. Those who were able to work negotiated advantageous arrangements for their services and put an end to their lowly villein status. G. R. Elton stated the matter succinctly:

Feudalism, stable on its basis of the land and firm in its scheme of known rights and duties, gave way to the patronage system of bastard feudalism

where men's ambitions and needs were satisfied by him who could pay for services and at whose order and discretion they were done.<sup>5</sup>

The nobles were forced not only to pay more for labor but also to raise money by renting the land that they had previously used themselves. The price of goods they were compelled to purchase increased just as the lower demand of a smaller population depressed both rents and the prices of the crops they were able to sell. Moreover, at the same time, the costs to run a manor increased; those costs included the hospitality that the nobles were expected to extend, their legal adversities, and in some cases their personal excesses.<sup>6</sup> These pressures led the nobles to treat land not as a measure of prestige but as a commodity that could be bought and sold to support their lives. In turn, the market for land and the land law grew as the Elizabethan era reversed the trends of the two preceding centuries.

## **2. In Shakespeare's Life**

The plague was part of Shakespeare's life<sup>7</sup> as well as Elizabethan life. The death/birth records of Shakespeare's birthplace Stratford-upon-Avon indicate that in July 1564 – three months after his birth – “*Hic incepit pestis*” (“now the plague began”). The plague claimed one-sixth of Stratford's population before it subsided in the winter.

Although Shakespeare's timing for an entry to London theatre life in the early 1590s was fortuitous in that his likely competitors died soon after his arrival -- Christopher Marlowe, the author of *Tamburlaine*, *Doctor Faustus*, and *The Jew of Malta*, died in 1593, and Thomas Kyd, the author of *The Spanish Tragedy*, died in 1594 -- it was unfortunate in that the plague struck London in June 1592. Its effects were exacerbated by crowding and poor sanitation. All public gatherings within seven miles of the city were banned and theatres were closed to prevent the spread of contagion.<sup>8</sup> An outbreak

in 1593 claimed approximately 11,000 people.<sup>9</sup> The plague recurred in February 1594, again closing the theatres, although Shakespeare's *Titus Andronicus* was performed in January 1594 at the Rose Theatre. The relationship of the plague and theatre gave rise to a curious syllogism preached at St. Paul's Cathedral in November 1577: "The cause of plagues is sinne, if you look to it well, and the cause of sinne are playse: Therefore the cause of plagues are plays."<sup>10</sup> With theatres closed, the acting companies had no choice but to take their shows into the country. Shakespeare may have taken the opportunity of the closure of the theatres to write *The Rape of Lucrece* and *Venus and Adonis*.<sup>11</sup>

The last significant outbreak of the plague in Shakespeare's lifetime occurred at the beginning of the reign of James I in 1603. A weekly death toll of eleven hundred eventually killed 38,000 of London's 200,000 residents, closed the theatres, and compelled a year's postponement of the coronation .

### **3. In Shakespeare's Works**

The plague plays a minor role in Shakespeare's works. However, in *Romeo and Juliet* its part is a turning point. Friar Laurence's elaborate scheme to reconcile the Montagues and Capulets involves giving Juliet a drug to make her seem dead for forty-two hours and thus avoid a marriage that has been arranged for her. He prepares a letter to Romeo informing him of the plan. The letter could not be delivered by Friar John or a messenger "So fearful were they of infection," 5.2.16. After Juliet is placed in her family crypt, Romeo's servant Balthazar tells him she has died. Romeo poisons himself by the crypt. When Juliet awakens, she sees Romeo and stabs herself.

## B. Social Change

### 1. The End of the Hierarchical Society

“Elizabethan society was intensely, pervasively, visibly hierarchical.”<sup>12</sup> Ulysses expressed a prevalent Elizabethan world view in *Troilus and Cressida* 1.3.85-88:

The heavens themselves, the planets, and this centre  
Observe degree, priority, and place,  
Infixture, course, proportion, season, form  
Office and custom, in all line of order.

This order was soon to be upset by the discoveries of Copernicus and Galileo in astronomy which prompted John Donne (1561-1626) to observe:

. . . [The] new philosophy calls all in doubt,  
The Element of fire is quite put out;  
The Sun is lost, and th' earth, and no man's wit  
Can well direct him where to looke for it.  
'Tis all peeces, all coherence gone;  
All just supply, and all Relation.<sup>13</sup>

The lost coherence was evident not just to stargazers but also to observers of English society. William Harrison began his contemporary account of Elizabethan England:<sup>14</sup>

We, in England, divide our people commonly into four sorts, as gentlemen, citizens or burgesses, yeomen, and artificers or labourers.

The gentlemen (after the king) were themselves divided into four levels. Citizens and burgesses were free men in cities with sufficient means to hold office; Harrison included in this group the emerging class of merchants in international trade (although he was clearly disdainful of their effect on rising prices for domestic products and the abundance of expensive imported goods). Yeomen were also free men who owned their own land, stayed settled, prospered, kept their houses well, and maintained working servants. Day labourers and artificers were at the bottom but Harrison emphasized the quality of their

work and products. By end of the Elizabethan era, this hierarchy too was vanishing; even artificers had the benefit of a statute that regulated their work.

The instability of the heavens freed mankind from its belief in the celestial ordination of their lives. Shakespeare expressed the individual's ability to change his star-bound fate. In *King Lear*, Gloucester promises to leave his land to his illegitimate son Edmund, but illegitimate children were not capable of inheriting. Edmund not only challenges the rules of inheritance but also the settled belief in predestination embodied in astrology: "This is the excellent foppery of the world: that when we are sick in fortune – often the surfeit of our own behaviour – we make guilty of our disasters the sun, the moon, and the stars, as if we were villeins by necessity." 1.2.105-108.

In *Julius Caesar*, 1.2.140-41, anticipating their assassination of Caesar, Cassius tells Brutus

The fault, dear Brutus, is not in our stars,  
But in ourselves, that we are underlings.

In each of these plays, the individual is empowered to determine his own actions.

## **2. The End of "Limited Good"**

The social mobility following the Black Death led to a new personal sensibility in the English serf. The "image of limited good" that George M. Foster has proposed as the South American peasant world view applied with equal force to the English serf before the plague:

. . . broad areas of peasant behavior are patterned in such fashion as to suggest that peasants view their social, economic, and natural universes – their total environment – as one in which all of the desired things in life such as land, wealth, health, friendship and love, manliness and honor, respect and status, power and influence, security and safety, *exist in finite quantity and are always in short supply*, as far as the peasant is concerned. Not only do these and all other "good things" exist in finite and limited quantities, but in

addition *there is no way directly within peasant power to increase the available quantities*. . . . “Good,” like land, is seen as inherent in nature, there to be divided and redivided, if necessary, but not to be augmented.<sup>15</sup>

The Elizabethan era witnessed the beginning of a sense of the individual’s unbounded opportunities and the end of a notion of limited good.

### **3. The Fate of the Sumptuary Laws**

This individuation can be seen in the fate of the sumptuary laws. Although one would expect common labourers to dress differently in style and cost from the nobility, the sumptuary laws precisely dictated the color, quantity, quality, price, and style of clothing by reference to the wearer’s station. In his first Parliament of 1509, Henry VIII saw to the enactment of *An Act Agaynst Wearing of Costly Apparrell*.<sup>16</sup> Amplifying laws from 1463 and 1483, this act sought to end the “great impoverishing of divers of the King’s Subjects” many of whom were driven to robbery and extortion to “maintain their costly array.”<sup>17</sup> Among the rules were prohibitions of wearing: purple cloth with stripes of gold thread or purple silk by anyone but the royal family; sable by anyone under the degree of baron; and imported wool by anyone under the degree of lord or Knight of the Garter. The act also sought to protect the English wool trade and to curb imports. Nevertheless, the overarching goal was the preservation of social order by a legal framework for the identification of one’s degree.<sup>18</sup> The 1509 Act was enlarged by an *Act for Reformacyon of Excesse in Apparayle*<sup>19</sup> which gave particular attention to silk goods and provided stricter penalties.

Despite a century of statutes and royal proclamations, and despite rewards for those who informed on scofflaws, and despite support by England’s most popular monarch Queen Elizabeth, the sumptuary laws were neither enforced nor effective. They

were repealed in 1604<sup>20</sup> apparently when the House of Commons rejected legislation proposed by James I that would have given him authority to govern dress by proclamation.<sup>21</sup> The rising middle class, the expansion of English trade, the New World (which brought the first cotton to England), and the spirit of individualism overcame the sumptuary laws.

Shakespeare makes many references to clothing and social status. The perceptive but mad Lear is not deceived appearances when he says “Robes and furred gowns hide all,” *King Lear*, 4.6.159. In *Twelfth Night*, 3.4, Malvolio, in his cross-gartered yellow stockings, appears ridiculous and offensive to Olivia in part because he affects a courtly style.

Shakespeare himself has been a “victim” of fashion. Among the reasons to doubt his very few contemporary images is the inappropriate costume. The portrait by Martin Droeshout in the First Folio, which his colleague Ben Jonson acknowledged was Shakespeare’s likeness, has a solid flat collar which was not an Elizabethan style. The Chandos portrait in the National Gallery shows Shakespeare in a black doublet that indicated wealth because of the high cost of black dye.

#### **4. The End of a Lineage Society**

The lineage society gave way to a civil society in which kinship was less important, social responsibility was more important, and individual choice was possible. In the first scene of *Romeo and Juliet*, the Prince enjoins on penalty of death the ancient quarrel between the Capulets and the Montagues that “disturbed the quiet of our streets.” On the other hand, that play dramatized the right of personal choice in love and its possibly tragic consequences.



## **5. The Changing Role of the Land**

In the Elizabethan world, land lost its medieval attraction as a measure of power and took on a new measure – its revenue to the owner. The buyer of land sought a return on his investment and not the mere prestige of ownership. The enclosures discussed in Section II.E arose from this new economic rationality. The emergence of a landholding middle class with its own political, social and economic agenda led to greater involvement of the land law in everyday life.

### **C. The Changing Role of the Church**

#### **1. The Advent of Protestantism**

At the beginning of the sixteenth century, the Roman Catholic church was a state within a state having special franchises and its own ecclesiastical courts. There were, however, the beginnings of fundamental changes. Just as the nobility was feeling economic and social pressures, so also the church was encountering the anti-clerical sentiments throughout Europe that had been expressed in England by Geoffrey Chaucer two hundred years earlier. The Ninety-Five Theses (1517-18) advanced by Martin Luther (1483-1546) criticized the church's sale of indulgences and its policy that good works were the road to salvation; for Luther and his follower John Calvin, faith was the means of salvation. Protestantism spread quickly through Germany, Geneva, France, the Netherlands, Scotland, and Scandinavia. In the epoch as a whole, Catholic zeal had the feebleness of age and Protestant zeal had the feebleness of immaturity.<sup>22</sup>

In 1509, at the age of eighteen, Henry VIII ascended to the crown. After his break with Pope Clement VII over the divorce from Catherine, Henry declared himself the head of the Church of English in 1529, thus beginning the English Reformation. The Reformation Parliament convened in 1529 and continued to 1536. At the prompting of

Henry's chief minister Thomas Cromwell, Parliament passed in rapid succession several acts that redirected the church's revenues to secular recipients and the crown. The *Mortuaries Act and Probate Act* (1530) limited ecclesiastical income from estates and funerals. The *Act of Annates* (1532) abolished the obligation of a bishop to pay his first year's income to the Pope. The *Act of Appeals* (1533) abolished the Pope's right to decide on the jurisdiction of the ecclesiastical courts and ruled that spiritual cases "shall be hence forth definitely adjudged and determined within the King's jurisdiction and authority," and "not elsewhere."<sup>23</sup>

## **2. The Expropriation of Church Lands**

Henry VIII's abolition of monastic establishments and dissolution of the monasteries<sup>24</sup> a generation before Shakespeare was born played a large role in Shakespeare's prosperity. The forfeited church landholdings for which tenants paid rents or tithes were sold by the crown or transferred to municipal authorities. When Shakespeare's birthplace Stratford upon Avon was incorporated in 1553, the crown granted the church lands within Stratford's boundaries to the Stratford Corporation. The Stratford Corporation made new leases with tenants who paid rents or made subleases for the land granted to them.<sup>25</sup> As a buyer of tithe leases, Shakespeare was a beneficiary of the dissolution of the monasteries as discussed in Section III.H. The appropriation of church lands by Henry VIII after the Reformation and his subsequent "fire sale" of them gave rise to a new gentry and middle class that, like Shakespeare, traded in land and began to erode the landowning monopoly of the old nobility.<sup>26</sup> These mercantile activities enhanced the role of the land law in the service and control of commerce.

When Henry VIII dissolved the monasteries, the revenues due to Westminster (which was consecrated to St. Peter) were diverted to St. Paul's. The expression "robbing

Peter to pay Paul” is often said to have originated then, but in fact the phrase occurs in John Wycliff’s *Select English Works* (c. 1380), and appears in a twelfth century expression “As it were one would crucify Paul in order to redeem Peter.”

The dissolution of the convents, by the way, increased the marriageable women and spurred the Elizabethan growth.

### **3. Individual Worship**

One of the doctrinal differences with the Roman church was the Protestant belief that the people should be able to read the Bible for themselves and that the Roman church should not have a monopoly on religious education. Cromwell and Henry both favored an English Bible, Cromwell because he believed that scripture was the supreme authority, and Henry because it was God’s word and Henry was head of the Church of England. Their goals coincided with the advent of the printing press and the availability of vernacular scriptures that undercut the clerical monopoly assured by the Latin Vulgate of St. Jerome. Latin was no longer taught as the primary language when lay teachers displaced the clergy in schools. Language became a matter of political importance and not a religious issue as grammar schools emerged for the education of boys.<sup>27</sup>

Thomas Cranmer, whom Henry VIII chose as the Archbishop of Canterbury, wrote the *Book of Common Prayer* in 1549 (and revised in 1552), in English with the goal of it being comprehensible to all English speakers. The first English Bible had been published in 1539. The believer’s dependence on the Latin-based church was at an end and the individual was free to pursue his or her faith.

### **D. The Financial Needs of the Crown**

Throughout almost all of the Elizabethan era, the crown was in desperate financial circumstances. John of Gaunt bemoans this in *Richard II*. 2.1.40-60:

This royal throne of kings, this sceptered isle,  
This earth of majesty, this seat of Mars,  
This other Eden, demi-paradise,  
This fortress built by nature for herself  
Against infection and the hand of war,  
This happy breed of men, this little world,  
This precious stone set in the silver sea,  
Which serves it in the office of a wall,  
Or as a moat defensive to a house  
Against the envy of less happier lands;  
This blessed plot, this earth, this realm, this England,  
This nurse, this teeming womb of royal kings,  
Feared by their breed and famous by their birth,  
Renowned for their deeds as far from home  
For Christian service and true chivalry  
As is the sepulcher, in stubborn Jewry,  
Of the world's ransom, blessed Mary's son;  
This land of such dear souls, this dear dear land,  
Dear for her reputation through the world,  
Is now leased out – I die pronouncing it –  
Like to a tenement or pelting farm.

The response of the crown to its budgetary problems was often to sell crown lands. Once again, land was used as a commodity in trade and the land law became a factor in everyone's life.

## **1. Henry VII**

On August 22, 1485 at Bosworth Field in Leicestershire, Richard III was killed, the House of York was vanquished, and the fifty year War of the Roses ended.<sup>28</sup> The House of Lancaster under twenty-eight-year-old Henry Tudor – now King Henry VII – was victorious, and the 118 year reign of the Tudors began. Henry VII married Elizabeth of York, the oldest daughter of Edward IV in an effort to unify the Houses of Lancaster and York.

In addition to the establishment of the monarchy, Henry VII's other task was the replenishment of the crown's wealth. The sources of the crown's wealth were the ordinary income of the crown from its lands, the revenues from customs and exports, the

profits and fines levied in courts of justice, and its feudal prerogatives. In addition, the crown had occasional benefit of extraordinary grants and loans from Parliament.

In his efforts to assure that the crown could live on its own, Henry enforced amounts due to the crown. His efforts are variously seen as rapacious or merely collecting what was due to him.<sup>29</sup> Instead of executing nobles for capital crimes, he used the Parliamentary judgments of attainder or forfeiture. Attainder was a determination of corrupt blood with a resultant forfeiture of lands to the crown, although the judgment was often commuted in exchange for a payment. Forfeiture resulted in a direct loss of the land to the crown. Some of Henry VII's desperate revenue-raising techniques are simply amusing:

(a) When his daughter Margaret married the King of Scotland, he sought the customary payments from his nobles but he did so more than two years after the marriage had occurred.

(b) He also sought those payments upon the knighting of his son Arthur, which, although again entirely appropriate, was unusual since the knighting had occurred fifteen years earlier and Arthur had been dead two years when the request was made.

(c) One of Henry VII's tax collectors was the Archbishop of Canterbury John Morton (c. 1420-1500) who used a taxing technique that came to be known as "Morton's Fork:" a person who lived lavishly could afford to pay taxes because he obviously had the money to do so, and a person who lived modestly could afford to pay taxes because he had obviously saved his money by the avoidance of lavish living.

(d) Henry VII's Star Chamber levied a £10,000 fine on the occasion of a social visit to his friend Earl of Oxford who honored the king with a parade of six hundred liveried retainers in violation of the *Act of Livery and Maintenance*<sup>30</sup> (1504) which prohibited private armies ("no person, of whatever degree or condition he be . . . shall privily or openly give any livery or sign or retain any person, other than such as he giveth household wages without fraud or colour").<sup>31</sup>

When Henry VII died on April 21, 1509, he had restored the monarchy, subdued the nobility, reigned for twenty-five years free of civil strife, expanded England's foreign commerce (especially the wool trade), taken steps toward a national economic system, raised an efficient mercantile fleet, and passed on his throne peacefully. He had filled the crown's coffers and had wealth estimated at £42,000 while his next greatest subject's wealth was estimated at £4,000.

## **2. Henry VIII**

In 1509, at the age of eighteen, Henry VIII ascended to the crown. Henry and his chief minister Thomas Cromwell pursued the dissolution of the monasteries with zeal, prompting (perhaps) the reference to "Bare ruined choirs, where late the sweet birds sang." Sonnet 73, ln. 4. Before the dissolution (see also Section II.C.2), two-thirds of London was owned by religious groups.<sup>32</sup> In 1536 he appropriated the estates of small religious houses and in 1538 those of the larger ones. The estates were sold to speculators and resold to lesser men. Although the new-found wealth eliminated resistance to Henry's authority, the crown's revenue was quickly spent on ill-fated foreign incursions and patronage and of no lasting benefit. What would have enabled Henry to become the wealthiest monarch in England<sup>33</sup> became merely a benefit to the nobility and gentry.

The Royal Navy was an enduring contribution by Henry. As a result of England being a narrow island (as opposed to the square shape of partially landlocked France), no one lived far from the sea, and thus the possibility of staffing a Royal Navy was a real one. The newly designed ships had three beams as opposed to the two beams that characterized so-called round ships and employed a new cannon for broadside battle as opposed to the battle by ramming, archery and boarding that characterized the other ships of the day. The Royal Navy assured England's victory over the Armada a half century later.

Henry adhered to a popular saying of his day: "power is present, holiness is hereafter."

### **3. Edward VI**

As the son of Henry VIII by Jane Seymour, and sanctioned by Parliament and Henry VIII's will, Edward ascended to the throne at the age of nine in 1547 and died six years later. Although inflation hurt landlords with fixed rents and income, the brief reign of Edward was generally a prosperous one.

### **4. Mary**

In 1553, Henry VIII's first daughter Mary succeeded Edward VI and Lady Jane Grey, who reigned for only nine days after Edward. Mary's five-year reign was a social and religious catastrophe. On the economic front it was scarred by harvest failures in 1555 through 1557 and the loss of Calais in an unsuccessful war with France prompted by England's alliance with Spain. Mary's enduring contribution to the English commonwealth was her approval of the notion that taxes should pay for the normal operations of government and not just extraordinary ones. Although not practiced in her lifetime, this view of taxation eventually became a stabilizing force in the life of England.

## 5. Elizabeth I

The forty-four year reign of Elizabeth, the daughter of Henry VIII and Anne Boleyn, began with her ascension on November 17, 1558, at the age of 25. Throughout her reign, the Catholic nation of Spain had been a looming threat to England. With its wealth from the New World and formidable seafaring experience, Spain plotted to close the English Channel, meet troops from the Duke of Parma in the Netherlands, and invade England. England's small standing army made a successful invasion a real possibility. The Armada was composed of 130 vessels, 20,000 soldiers, 8,000 sailors, and 1,000 gentlemen. However, when the Royal Navy established by Henry VIII met the Armada in the Channel, the outcome was a distinct victory for England. Its smaller and more agile ships (without fore and aft castles) out maneuvered the Armada's, which were better designed for the calmer Mediterranean waters than the choppy waters of the Channel. England's artillery was not only more numerous but also more effective than its Spanish counterparts. Many of the Armada's ships were sunk in the Channel and many more were lost trying to return to Spain.<sup>34</sup> Only half the Spanish fleet returned. No English ships were lost. The defeat of the Spanish Armada in 1588 was one of the finest moments of Elizabeth's reign and the emerging nation.

On the other hand, Elizabeth was beset by economic problems. Tax revenues declined; as the result of use tax evasions, only one-sixth to one-tenth of the English wealth was taxed.<sup>35</sup> In 1596, Shakespeare was cited for his failure to pay a 5s tax on his goods valued at £5 (even though he bought a substantial residence in Stratford at about the same time) and similar small amounts in 1598, 1599 and 1600.<sup>36</sup> With the rising birthrate and increased longevity, the *Poor Laws of 1601* were enacted and put the burden of unemployment on local parishes. Local taxation increased, as did a vigorous trade in



local offices from which the crown had no benefit. The licenses and monopolies granted by the crown were in some cases genuine but often they were ruses to corner a market.

Nevertheless, when Elizabeth died sitting up in her sleep on March 24, 1603, she had reduced England's religious rivalry, secured the realm, and restored confidence in the government.<sup>37</sup>

## **6. James I**

The succession of James VI of Scotland to the English crown as James I had been arranged by Elizabeth's councilors as her health declined; she may also have indicated her preference as she neared death. The month-long procession from Edinburgh to London was greeted joyously by the English people pleased by the peaceful transition. History, however, has not accorded James I of England such a warm reception.<sup>38</sup>

James's profligate ways and indulgence of his favorites led to continued indebtedness of the crown. He sold knighthoods, lordships, peerages, and baronetcies for as much as £10,000 each but still never managed to live within his means. He offered to give up his customary right of wardship<sup>39</sup> for a regular tax, but the House of Commons refused for fear of losing control over James's expenditures. "[L]and with all the political and economic power associated with it, was passing out of the hands of the monarchy and into those of the gentry and nobility."<sup>40</sup> In a remark curiously reminiscent of feudalism and reflective of possessive individualism, Lord Treasurer Lionel Cranfield said "In selling his lands, he did not only sell his rent, as other men did, but he sold his sovereignty for it was a greater type of obedience to be a tenant to the King than to be his subject."<sup>41</sup>

### **E. The Enclosures**

In the medieval scheme of communal agriculture, the lords used a third of their estates to support themselves, leased a third, and left the remainder to be shared as “commons” for grazing. The tenants leased long narrow strips of unfenced ground not necessarily adjacent to one another. The strips were allocated with the intention that the tenants have equally valuable lands. The tenants might informally enclose their strips with hedges to pen their cattle, pigs and sheep. On a small scale, enclosures increased productivity with a possible surplus for sale at market and an opportunity of other employment for the excess labor.

The system was fair but wasteful “since the communal tillage of open fields was not conducted on scientific lines, and obviously no one would spend capital improving his scattered and unimproved plots for the benefit of his neighbors.”<sup>42</sup> A farmer had no reason to weed his fields if his neighbor did not, and had no way to drain his fields if his neighbor did not cooperate with the drainage system. Garrett Hardin observed that people who share a common grazing area will each have an incentive to increase their herds. This is a benefit to the individual but a shared burden on the commons, and the individual’s direct benefit outweighs the small shared burden allocable to him. As a result, the people will increase their herds until the commons are exhausted and everyone’s benefits are lost.<sup>43</sup>

When the population began to recover from the Black Death and the wool trade began to prosper, the value of land rose; for example, Yorkshire land that brought 4p per acre in the fifteenth century, brought 9p per acre in 1548 and 2s 4p in 1621.<sup>44</sup>

Landowners took to enclosing the common areas, and converting arable land, waste and meadow to pasture land for the sheep that came to outnumber humans three-to-one. As a

result of the enclosures, the rights of common grazing were restricted, and demand for and the price of grain increased.<sup>45</sup>

Because sheep husbandry required one or two men and a dog for a flock, as opposed to twelve men to “plough and sow/reap and mow” in a farm, unemployment increased. Sir Thomas More wrote “[Sheep] which are ordinarily so meek and require so little attention to maintain them, now begin (so they say) to be so voracious and fierce that they devour even the people themselves.”<sup>46</sup>

The enclosures did not present a problem to land that the lord cultivated for itself or land subject to short term leases that could be renegotiated as their value increased. The enclosures posed a real threat to tenants whose rights were precarious (*L. prex*, *prayer or entreaty*) and, at first, to copyhold tenants whose rights arose from the records kept according to the custom of the manor. The interests of copyhold tenants (see Section III.I) came to be protected in the royal courts which gave them a defense to eviction and a right to remain at their stated rents and other duties, although the lord could exact a payment called a *heriot* or *relief* upon the tenant’s death.

More than twenty years before he had any personal experience with enclosures (see Section III.H), Shakespeare made his only clear reference of them in II Henry VI 1.3.22-23 when one of several petitions to the queen is “Against the Duke of Suffolk for enclosing the commons of Melford;” the matter does not otherwise figure in the play, but indicates the loss of the feudal bond among men, lords and land.

In Shakespeare’s works, rights in common appear:

(a) In *Julius Caesar* 4.1.27, Anthony speaks to Octavius of making use of Lepidus in their plot but when done with him turning him out to “graze in commons.”

(b) When Cade promises that after the revolt he imagines “All the realm shall be in common.” *2 Henry VI* 4.2.63

(c) When Antipholus tires of Dromio’s impertinence, he says “Your sauciness will jest upon my love / And make a common of my serious hours,” *The Comedy of Errors* 2.2.28-29.

(d) When Catherine and Boyet flirt in *Love’s Labour’s Lost* and she says “my lips are no common, though several they be” (2.1.33), meaning they are owned and not shared, and “several” in the double sense of “more than” one lip or “separate.”

Despite the absence of clear records, the enclosures seem to have affected just three percent of the commons.<sup>47</sup> Nevertheless, vagrancy and poverty are commonly and rightly considered as phenomena with lasting social consequences of the enclosures. When Edgar disguised himself as Poor Tom in *King Lear* and wandered the land, the Elizabethan audience would have recognized a vagabond victim of the enclosures. The enclosures were also economic phenomena that yet again put land into commerce and further promoted the land law to its pre-eminent role in the legal system.

## **F. The Legal Structure**

In the Elizabethan era, the common law was essentially the law of land.”<sup>48</sup> The early law and procedure were directed to the land and to people as owners of land (at first the king’s tenants) and not to people as individuals. The procedure was slow because the subject matter could not be removed from the court’s jurisdiction and because judges,

lawyers, and litigants needed to attend to the demands of agriculture at harvest and planting seasons. The evidence usually did not require witnesses since the titles could often be resolved by reference to deeds and other written instruments. As a result of the limited scope of these early actions, the inadequacy of the common law and common law courts led to the creation of other courts with specialized jurisdiction and more flexible rules as discussed in Section III.B.

As to Shakespeare, his close connection to the land law arose through his roles as an owner, investor, litigant, and witness; his “drama is striated with legal terminology, particularly that concerning property law.”<sup>49</sup>

Many of the legal principles that facilitated the Elizabethan treatment of land as a commodity had been settled for several centuries; however, the Black Death and its aftermath made their availability irrelevant. Those principles are discussed in Section III.F.1. In the Elizabethan era statutes were enacted and cases were decided that abetted the commercial use of the land. Those statutes and one of those cases are addressed in Section II.F.2.

### **1. The Settled Rules**

By 1290, there were two methods of alienation available to a tenant (or occupant of land) upon making a payment called a *fine* to his lord.

A tenant could transfer his entire interest by *substitution*; a modern lawyer might consider this an assignment. If B held as a tenant of A, and substituted C, then C held as a tenant of A. The overlord would have had an interest in the identity of the substituted tenant when the tenant’s services (such as provision of knights) were important. As the services became less valuable and the tenant’s monetary burdens – or *incidents* – became

more valuable, the overlord's concern about a substitution diminished; as long as the land was subject to the incidents, the tenant's identity was unimportant. No new tenure was created by substitution.

When the cost of maintaining a household of knights became burdensome, the lords granted tenures within their tenures. The process was *subinfeudation*; a modern lawyer might compare it to a sublease. The subinfeudated tenant owed services to his lord. The burden of those services bound not only the tenant but also the land, so that it might be said to run as a burden to the land. The lord's transfer of the land or subinfeudation of part of it did not relieve the lord or the land of the burden. The overlord could compel the lord's tenant to perform services that the lord failed to provide.

However, unlike substitution which came to be of little concern to the overlord when the provision of services became unimportant, subinfeudation was of profound concern to the overlord when the monetary incidents became more valuable. Subinfeudation created a new tenure between the overlord's tenant and the subinfeudated tenant. If the lord B held the Manor as the tenant of the overlord A, and B conveyed the Manor to C by subinfeudation, then A could look to the Manor for the services that were due but was only entitled to the incidents due to B from C according to the terms of the grant from B to C. If the Manor was substantial, A expected income from the incidents. However, if B subinfeudated (in exchange for minimal services such as a rose at midsummer), B could get (1) an immediate payment for the value of the estate, and (2) a seignory – the rose – of no value. The overlord was entitled to the regular services, but the incidents were of no value. B stripped the value of the Manor.

a. *Statute Quia Emptores*

To avoid this outcome, the *Statute Quia Emptores*<sup>50</sup> (which derives its name from its first few words “because purchasers of land . . .”) provided that free men could sell their tenements in fee simple by *substitution* without paying a fine to the overlord but that the purchaser became liable for the performance of the services and payment of the incidents due to the overlord. *Quia Emptores* eliminated new tenures and the rungs between the crown and the subinfeudated tenants. By the rule of escheat by which all land reverted to the overlord on a lord’s death, all tenants were eventually tenants of the crown and upon their deaths the crown regained their tenements. Put another way, no lord (other than the crown) created a new tenure after 1290 because there could be no tenants to hold of a lord. The feudal pyramid disappeared as lands reverted to the crown.

*Quia Emptores* also put an end to a means for the church to own land. Lords had long sought *statutes of mortmain* (F. dead hand) to keep land out of the hands of churches which the lords believed did not give anything tangible back to society. At the beginning of *Henry V* 1.1.7-11, the Archbishop of Canterbury and the Bishop of Ely discuss how they might defeat a proposed statute of mortmain. The Archbishop says:

If it pass against us,  
We lose the better half of our possession,  
For all the temporal lands which man devout  
By testament have given to the Church  
Would they strip from us.

*Quia Emptores* illustrates that the lords considered the incidents more valuable than the services.<sup>51</sup> As prices grew and the need for knights diminished, services lost their value. The incidents, however, were inflation-proof and adjustable in some cases. Because transferors could no longer receive services over time, *Quia Emptores* encouraged the sale of land for a profit; it was the end of feudalism and the beginning of

a free market in land.<sup>52</sup> If the owner wanted to have services over time, a lease – or term for years – worked well.

**b.      *Statute De Donis***

With their new ability to buy and sell land after the enactment of *Quia Emptores*, the lords next needed a way to keep it in their families. The *Statute De Donis Conditionalibus* of 1285<sup>53</sup> provided the means to do it. Well before *De Donis* (from the introductory phrase “regarding conditional gifts . . .”), the nobility had endeavored to keep their lands in their families by grants such as “to A and the heirs of his body” with the intention that the lands remain with the bloodline. The courts had construed the grant to mean that upon the birth of an heir, the condition was satisfied and the grantee could freely convey the land. *De Donis* provided that the grantor’s intent in the creation of conditional gift be respected.

*De Donis* had the salutary effect of allowing a grantor to entail his estate to the heirs of his body, but it did not eradicate greed. The owner of an entailed estate might wait to sell it free of the entail. To do so, two similar collusive lawsuits could be used: a *common recovery* and a *fine*. The both relied on the rule that an entail could be broken if the entailed estate was replaced with one of equal value.<sup>54</sup>

In a *common recovery* the plaintiff/demandant sued the defendant/tenant-in-possession or tenant in tail alleging that the tenant wrongfully occupied demandant’s land and that the tenant’s claim arose through a third party. The tenant defended with a claim that the court crier (or bailiff) had warranted the tenant’s title and that the bailiff (the vouchee) should be “vouched to warranty,” or demanded to defend, the tenant’s title. The vouchee admitted the tenant’s claim and asked for a conference (or imparl) outside the court. In his absence, the court entered judgment by default against the vouchee and



in favor of the demandant and required the vouchee to give the tenant replacement property of equal value (which, of course, the vouchee was unable to do). The results were (a) the demandant's fee simple title free of all other claims, and (b) the right of future generations to pursue a worthless judgment. A double voucher was necessary for some titles and involved two vouchees.

A *fine* (or *finalis concordia*) is like a common recovery except that the claim was compromised in a collusive settlement. This device was used by wives to join in transfers of their husbands' property in order to extinguish claims of dower. The settlement was set forth in three identical recitations on a single sheet that was cut into three parts, one for each of the parties and one – the foot of the *fine* – for the court.

Shakespeare's references to fines and recoveries are humorous; see Section II.F.3 for another reference to recoveries. In *The Comedy of Errors* 2.2.71-76 this exchange occurs:

Dromio: There's no time for a man to recover his hair that grows bald by nature.

Antipholus: May he not do it by fine and recovery?

Dromio: Yes, to pay a fine for a periwig, and recover the lost hair of another man.

In *The Merry Wives of Windsor*, Mistress Page says of a chastised Falstaff: "If the devil have him not in fee simple, with fine and recovery, he will never, I think, in the way of waste attempt as again" 4.2.183. With fee simple as the largest estate and fine and recovery a judicially sanctioned means of transfer, Shakespeare here uses the legal terms in a metaphorical way.

## 2. The Elizabethan Statutes and Shelley's Case

### a. Uses and Trusts

A use, which a modern lawyer would call a trust, was a conveyance by a feoffor to a feoffee for the use of the feoffee, or a third party called the *cestui que use*, according to the wishes of the feoffor. The feoffee was (in theory) obligated to provide the lucrative incidents described in Section II.F.1 but there were ways to avoid them. The *cestui que use* escaped these burdens. Land held in use was not subject to escheat or forfeiture for felony. The use could be employed to put one's assets beyond the reach of creditors or to defeat inheritance. The use could also be used in lieu of a will before wills were lawful; a landowner could transfer land to trustees to hold it for the landowner's benefit until his death and then to transfer it according to his wishes. Because Chancery court described in Section IV.B protected the *cestui que use*, the use became so popular that "[b]efore the year 1535 most of the land in England was held to uses."<sup>55</sup>

As a result of uses, the king who was always a lord and rarely a tenant lost valuable rights such as escheat and forfeiture. Ever eager to augment his coffers despite opposition from lords and Chancery court lawyers, Henry VIII saw to the passage of the *Statute of Uses*.<sup>56</sup> Sir William Holdsworth called the *Statute of Uses* "perhaps the most important of all the statutes dealing with the law of real property."<sup>57</sup> The statute made the *cestui que use* liable for the incidents. Since ways remained to evade the *Statute of Uses* by certain oral transfers, the *Statute of Enrollments*,<sup>58</sup> which was passed shortly after the *Statute of Uses*, required those transfers to be written. An incidental effect of the *Statute of Uses* was the diversion of cases from Chancery court to the common law courts – a fact that won over the common lawyers in the House of Commons. This occurred

because, when the equitable estates subject to Chancery's jurisdiction were executed and became legal estates, they were subject to the common law courts.

In *The Merchant of Venice*, Antonio asks the Duke for one half of Shylock's goods for himself and "The other half in use, to render it / Upon his death unto the gentleman / That lately stole his daughter" 4.1.377-79. Since this division is proposed in response to Shylock's plea that the Duke "do take the means whereby I live," it seems that Shylock is to live from half his former estate and that upon his death it is to go to his daughter Jessica and Lorenzo.

Despite the importance and prevalence of uses, *The Merchant of Venice* has the only mention of a use in a strictly legal sense. Otherwise the term is employed more generally; for example Anthony says to Cleopatra on parting:

Hear me, Queen.  
The strong necessity of time commands  
Our services a while, but my full heart  
Remains in use with you. *Anthony and Cleopatra* 1.3.42-44

#### **b. The Rule in Shelley's Case**

The Rule in Shelley's Case<sup>59</sup> has bedeviled law students for hundreds of years. Although the case was decided in 1581, it has been an established principle of English law for two centuries before Shelley's Case. The facts of the case are complicated but the rule is less so: if A grants an estate to B for the duration of B's life, and after B's death then to B's heirs, A gets a present estate in fee tail (that is, limited to the heirs of B's body). The term "B's heirs" are said to be words of limitation, not words of purchase. As a result, upon B's death, the heirs got the land by descent (or inheritance) since they were not purchasers, and A was entitled to a payment in accordance with the rules of descent.

Despite the necessity to make a payment to A, the Rule in Shelley's Case facilitated full alienability of land (because B owned a fee estate). Once again, as with the settled rules, the principle of Shelley's Case has been dormant while the consequences of the Black Death lingered, but the pronouncement in the case revived an important means of monetizing land and allowing individuals to accumulate it.

### 3. The Graveyard Scene

As Hamlet wanders in a graveyard before the burial of Ophelia, he chats with the gravediggers who toss him the skulls that have been uncovered. Contemplating one of the skulls, Hamlet speculates that it may be a lawyer's and offers a catalog of conveyancing terms and puns that seem inappropriate for the conclusion of a play concerning regicide, incest, and suicide. He says:

There's another. Why might not that be the skull of a lawyer? Where be his quiddits now, his quillets, his cases, his tenures, and his tricks? Why does he suffer this rude knave now to knock him about the sconce with a dirty shovel, and will not tell him of his action of battery? H'm! This fellow might be in's time a great buyer of land, with his statutes, his recognizances, his fines, his double vouchers, his recoveries. Is this the fine of his fines and the recovery of his recoveries, to have his fine pate full of fine dirt? Will his vouchers vouch him no more of his purchases, and double ones too, than the length and breadth of a pair of indentures? The very conveyances of his lands will hardly lie in this box; and must th'inheritor himself have no more, ha? *Hamlet* 5.1.90-102

*Quillet* refers both to a small piece of ground and to a quibble. *Quiddits* (more commonly appearing as *quiddity*) is not a legal term; it is a word also meaning a quibble or fine distinction, but also meaning the essence of a thing. "*Quillet*" and "*quiddit*" have alliterative appeal. *Quillet* may be a pun on *qualities*. The grave site is a small piece of ground or *quillet*.

Shakespeare puns on *fine* using it not only in its legal sense but also in the sense of *final* (“the fine of his fines”), and in the sense of *quality* (“his fine pate”) and in the sense of *very small* (“fine dirt”). The suggestion that the lawyer’s head was filled with dirt is unmistakable.

*Statutes* were of two sorts – statutes-staple and statutes-merchant – and both were security for the payment of money. If a debtor failed to pay his debts, the creditor could seize his goods and land to satisfy the debt from the rents and profits. The creditor’s interest technically was an estate defeasible on condition subsequent.<sup>60</sup> *Recognizances* have nothing to do with conveyances.

The Elizabethan audience would have also appreciated a “pair of indentures” as a pun on dentition in the skull. The “pair of indentures” would also have been a reference to a kind of deed. An indenture began “This Indenture made between A and B,” was cut or torn irregularly across a word to prevent forgery, and was given in pieces to the parties to the indenture. When Henry Percy (known as Hotspur), Mortimer, and Glendower plot to rebel against Henry IV and to divide England and Wales among them, Mortimer says:

And our indentures tripartite are drawn,  
Which, being sealed interchangeably . . . *I Henry IV* 3.1.77-78

An indirect reference to indentures occurs in *Troilus and Cressida* 3.2.55-56 when Pandarus, spying on the lovers says “What, billing again? Here’s ‘In witness the parties interchangeably’” which is from the introductory recitals to an indenture. *Billing* meant *kissing*.

*Indenture* was also a general term for an agreement. “Upon thy cheek lay I this zealous kiss / As seal to this indenture of my love.” *King John*, 2.1.19-20.

Finally, “the very conveyances of his lands will hardly lie in this box” refers not only to his coffin but also the box in which lawyers kept records of land transfers. When the rebellious Butcher says, “The first thing we do let’s kill all the lawyers,” 2 *Henry VI* 4.2.70, he is proposing the destruction of the records of land ownership.

#### 4. The Curious Case of Ophelia’s Burial

The second way in which the land law is implicated in the gravedigger scene arises from the discussion of the way in which Ophelia died.<sup>61</sup> (The gravediggers are called “clowns” because their roles were played by comic actors.) The issue is whether she is to be given a Christian burial or whether she committed suicide; suicides were not entitled to Christian burials but rather were buried at a crossroad with a stake through their hearts.<sup>62</sup>

First Clown: Is she to be buried in Christian burial that wilfully seeks her own salvation?

Second Clown: I tell thee she is, and therefore make her grave straight. The coroner hath sat on her, and finds it Christian burial.

First Clown: How can that be unless she drowned herself in her own defence?

Second Clown: Why, ‘tis found so.

First Clown: It must be *se offendendo*, it cannot be else; for here lies the point: if I drown myself wittingly, it argues an act; and an act hath three branches: it is to act, to do, and to perform. Argal she drowned herself wittingly.

Second Clown: Nay, but hear you, Goodman Delver.

First Clown: Give me leave. Here lies the water – good. Here stands the man – good. If the man go to this water and drown himself, it is, will he nill he, he goes. Mark you that. But if the water come to him and drown him, he drowns not himself; argal he that is not guilty of his own death shortens not his own life.

The self-murder is, of course, suicide but the death in the defense of one’s self is *se defendendo* (or as the gravedigger humorously misstates it “*se offendendo*”). They conclude that Ophelia is having a Christian burial because she was a gentlewoman and not because of her lawful entitlement.

The suggestion that a suicide was composed of three parts recalled the case of Hales v. Petit in 1563.<sup>63</sup> In that case, Sir Charles Hales, a puisne judge of the Common Pleas,<sup>64</sup> or lower court, drowned in 1554 in a river near Canterbury. Judge Hales had been indicted (but released) for his opposition to putting Lady Jane Gray on the throne. Although he was a Protestant, he could not take any action against the heir apparent Mary who was a Catholic. With similar conscientious attention to the rule of law, he instructed grand jurors that the religious settlements of prior reigns were in effect and that celebrating the mass was a crime. For this he was not allowed to take the oath of office under Mary and sent to jail. There he had tried to open his veins with a penknife and after his release drowned.<sup>65</sup>

His drowning was ruled a suicide (*felo de se*) and he was buried at the crossroads. In 1559 his widow Lady Margaret Hales brought an action against Cyriack Petit, to whom the crown had leased land that Judge Hales had leased and had forfeited to the crown upon the coroner's determination that his death was a suicide. The lease had been made to Judge Hales and his father in 1535 for twenty-one years and renewed by Judge Hales when his father died in 1540.

Dame Margaret claimed that she was only seeking to recover that which she had during the life of her husband because they held the lease as joint tenants.<sup>66</sup> Petit argued that the lease was forfeited to the crown before it could vest in Margaret by her right of survivorship. To prevail, Petit has to demonstrate that the crime that led to the forfeiture occurred during Judge Hales's lifetime; otherwise, his interest would have passed to Dame Margaret on his death. To support this argument, Petit argued that the felony of suicide had occurred before Hales died:

. . . the act consists of three parts. The first is the imagination, which is a reflection or meditation of the mind, whether or not it is convenient for him to destroy himself, and what way it can be done. The second is the resolution, which is a determination of the mind to destroy himself, and to do it in this or that particular way. The third is the perfection, which is the execution of what the mind has resolved to do.

Thus, Judge Hales's action was divided into three parts: the imagination of it, the resolution to commit it, and its execution. In Petit's view, Judge Hales committed suicide and forfeited his lease by stepping into the water, even though he was not yet dead and the court agreed:

Wherefore all the justices agreed, that the forfeiture of the goods and chattels real and personal of Sir James Hales shall have relation to the act done in his life-time which was the cause of his death, viz. the throwing himself into the water.

The court's decision reflects a struggle with the persuasive arguments of Dame Margaret and Petit. In 1994, the notebooks of the chief judge Sir James Dyer were discovered. As Dyer summarized it, "the queen's title shall be preferred, since it is the older, and by reason of prerogative, which is public, whereas the subject's title is particular. No priority in chattels shall prevail against the king . . ."67

The gravediggers' exchange is quite similar to a part of the decision:

Sir James Hales was dead, and how came he to his death? It may be answered, by drowning; and who drowned him? Sir James Hales; and when did he drown him? In his life-time.

The first gravedigger's analysis of the parts of an act echoes the arguments in the case, although he expresses three parts with synonyms and not separate acts. His suggestion that "He that is not guilty of his own death shortens not his own life" raises the question whether the death would have been ruled a suicide if the water had come to Judge Hales; he would have died *se defendendo*. In the play, the Queen suggests that Ophelia fell into the water and, with "her garments, heavy with their drink were,



drowned” (4.7.152). In fact, a question in the case was whether Judge Hales had fallen into the river by accident.

The conclusion in the play is ambiguous. Ophelia is buried in a churchyard, but the services are curtailed. Hamlet asks about the “maimed rites” saying “This doth betoken / The corpse they follow did with desp’rate hand / Fordo it own life.” 5.1.201-203 In response to Laertes’s complaint about the services, the priest responds “Her death was doubtful.” 5.1.209

Although Hales v. Petit was decided before Shakespeare was born, three remarkable coincidences would have impressed death by drowning in Shakespeare’s consciousness. In 1569, when Shakespeare was five years old, two-and-a-half-year-old Jane Shaxspere drowned while picking flowers in a river about twenty miles from Stratford; although there is no known familial relationship between Shakespeare and her, the haphazard Elizabethan spellings make it possible.<sup>68</sup> On July 6, 1579 a William Shakespeare (also no known relation) drowned in the Avon near Shakespeare’s home when he walked into the river to bathe and fell into a deeper part. On December 17, 1579, Katherine Hamlett drowned in the Avon while drawing a pail of water.<sup>69</sup> All three deaths were ruled accidental (*per infortunium*).

### **G. Nationalism**

The excommunication of Elizabeth I in 1570, the separation from Rome, establishment of the Anglican church, and the victory over the Armada all fostered nationalism and pride in England. The word *nation* gained its modern sense in the sixteenth century as it evolved from its earlier sense of a “race.” Although English had compared unfavorably with Latin and other European languages, by 1582 Richard

Mulcaster could state in the first part of his *Elementarie* (1582): “The English tung cannot proue fairer than it is at this date.”

### **CHAPTER III**

#### **SHAKESPEARE'S LAND TRANSACTIONS**

When Shakespeare arrived in London in the early 1590s,<sup>70</sup> its population was approximately 200,000,<sup>71</sup> representing a four-fold increase since 1500. Although deaths outnumbered births, the population grew with immigration from the country and the Continent. The City of London consisted of 448 acres with about 100 parishes. Shakespeare would have found a noisy, crowded city. The streets smelled from the “slime of refuse” because there was no drainage system and the contents of chamber pots were thrown indiscriminately into the streets. The poorest areas were the northern and eastern suburbs; yet, these were popular areas for theatres. Piccadilly was a “secluded place of country estates”<sup>72</sup> far from the City itself.

There would have been a few theatres all located in the “liberties” just beyond the jurisdiction of the Lord Mayor of London who disapproved of plays because of the crowds and occasional riots they attracted: the Theatre at Shoreditch (built by James Burbage as the first permanent theatre), the Curtain near the Theatre, the Rose and Swan on the south side of the Thames (known as Bankside), and the Red Lion at Mile End. James Burbage also owned the Curtain; it was named for the wall of Curtain Street that offered relief from wind and bad weather and not for the theatre curtain that had not yet been invented. In Cripplegate outside the north wall of the City, the famous tragedian Edward Alleyn held forth at Philip Harlowe's Fortune Theatre.

#### **A. Lodgings**

Shakespeare's first known lodgings in London, beginning before October 1596, were in St. Helen's Parish, Bishopsgate ward in the Shoreditch neighborhood.<sup>73</sup> The Theatre and Curtain were within walking distance.<sup>74</sup> In 1597 or so, Shakespeare moved

to Southwark on Bankside in the Liberty of the Clink, Surrey. The Clink was a small underground bishop's prison, from which the expression for *jail* derived. The Southwark location was near the future home of the Globe. In 1604, Shakespeare was living in the Christopher Mountjoy residence at the intersection of Silver and Muggle (Monkswell), between Cripplegate and Cheapside<sup>75</sup> in St. Olave's parish near the northwest corner of the City walls.<sup>76</sup> The Mountjoys were Huguenot "tire makers" who made the elaborate structures of gold, silver and jewels that women wore in their hair.

## **B. Companies**

Plays and players were both held in low esteem: "Plays are: the next of the Divil and the sink of all sin . . . They are public enemies to virtue and religion; . . . and bring both the gospel into slander; the Sabbath into contempt; men's soles into danger; and finally the whole Commonweal into disorder."<sup>77</sup> Acting companies sought the patronage of a lord in order to avoid a violation of the *Vagabond Act of 1604*,<sup>78</sup> which proscribed (among others) players of interludes, fencers, bearwards, minstrels, begging scholars and sailors, palmists and fortune tellers,<sup>79</sup> and condemned "roges, vagabonds, and sturdie beggars to be greevously whipped and burnt through the gristle of the right eare, with a hot yron of the compass of an inch about."<sup>80</sup>

After likely associations with several companies – including those under the auspices of the Earls of Leicester, Pembroke, Derby and Sussex, Lord Strange, and the Queen, Shakespeare's career stalled when the London theatres were closed by an outbreak of the plague in 1593-94. The economic duress took its toll on the companies. In 1594 Shakespeare was fortunate to join the Lord Chamberlain's Men, which operated under the patronage of Henry Carey, the first Lord Hunsdon, and cousin of the Queen.

The Lord Chamberlain's Men was formed by Richard Burbage, who was the son of James Burbage (himself a famous player) and an accomplished player in his own right. The new company included the comic actor Will Kempe. The significance of their association is, of course, an illustration of possessive individualism; each member was selected for his skill and contribution to the company – Shakespeare, as a writer, Kempe as a comic actor, and Richard Burbage as a tragedian.

Shakespeare was among the sharers (or fellows) known as the senior players. The sharers contributed capital to the company, took the most prominent roles, and shared in the profits of the company. The sharers were contrasted with the housekeepers (sometimes householders), who built and maintained the theatres and collected a fee from the companies.<sup>81</sup>

On May 19, 1603, shortly after James I took the crown, he issued letters patent that made Shakespeare's company the King's Men. The actors continued as "Grooms of the Royal Chamber;" the positions not only earned money but also allowed the members to wear royal livery.

During the last nine years of Elizabeth's reign, the Lord Chamberlain's Men had played at court thirty-two times. Between James's succession in 1603 and Shakespeare's death in 1616, the King's Men performed 177 performances, more than all the other companies put together.<sup>82</sup> Acting companies were typically short-lived; three or four lasted twenty years. However, the King's Men continued to perform for fifty years until all the companies were dissolved at the beginning of England's civil war in 1642.<sup>83</sup>

### **C. The Globe Theatre**

In 1576 James Burbage had leased land in Shoreditch for twenty-one years and built the Theatre. Before it, plays had been presented in courtyards or inns and attracted

rowdy crowds and occasional riots.<sup>84</sup> In April 1597 the lease of the land beneath the Theatre ended. Burbage tried unsuccessfully to negotiate an extension of the lease. He went so far as to agree to an increased ground rent from £14 to £24 per annum for a five year period.<sup>85</sup> However, when the landlord Giles Allen (who was a Puritan and opposed to theatre in general) insisted that the company make improvements that reverted to him after five years and objected to James's son Richard as a guarantor, James decided to move the Lord Chamberlain's Men to the Blackfriars Theatre, which he had acquired in 1596.

Shakespeare may have had the company's dilemma in mind when he wrote:

Why so large cost, having so short a lease,  
Dost thou upon thy fading mansion spend? Sonnet 146, lns. 4-5

The Blackfriars Theatre was located a few hundred yards southwest of St. Paul's Cathedral<sup>86</sup> and part of a former Dominican Priory, which had been confiscated in 1538 as a consequence of the Reformation. Situated in a "liberty" it was not subject to the power of the mayor of the City of London, and by 1596 it was "ran far into decay for want of reparations."<sup>87</sup> The offices of the *London Times* stand there today.

James Burbage spent £800 remodeling the Blackfriars Theatre. However, when the influential neighbors complained about the public nuisance threatened by the proposed theatre, the Privy Council prohibited performances. With neither the Theatre nor the Blackfriars Theatre, the Lord Chamberlain's Men performed occasionally at the Curtain Theatre near the Theatre. The company could hardly risk its future on the temporary use of a competitor's venue. Having put all his money into the empty Blackfriars Theatre and unable to finance another theatre, James Burbage died in January 1597 leaving the Theatre and Blackfriars Theatre to his sons Cuthbert and Richard.

(Richard is remembered for his epitaph “Exit Burbage.”) The company pursued two novel expedients: the Globe was founded and the sharers agreed to become owners of their own theatre.

On St. John’s Day (December 28) 1598, the Thames was nearly frozen at London Bridge. Members of the Lord Chamberlain’s Men, their contractor Peter Streete, and others dismantled the Theatre, loaded its parts into carts, and took it to Streete’s warehouse for storage until the foundation of the new theatre was completed. Some authorities suggest that they used a ferry that snowy night, while others think the river was too dangerous for passage and that London Bridge was used.<sup>88</sup>

Allen, as the owner of the Theatre, promptly brought suit for trespass seeking £800 in damages. His complaint asserted that the Lord Chamberlain’s Men and others did “ryotously assemble themselves together and then and there armed themselves with divers and manye vn-law full and offensive weapons, as namelye swords daggers billes axes and such like.” The suit continued for two years and was ultimately resolved in favor of the tenants because their lease was of the land and not the improvements which the lease allowed them to remove.

For the first time in theatre history, the sharers financed the theatre. The agreement among them executed February 11, 1599 provided that Richard and Cuthbert Burbage together owned fifty percent of the leasehold and the other five – Shakespeare, John Hemings (also Hemmings and Heminges), Thomas Pope, Kempe, and Augustine Phillips – each jointly owned ten percent. A ten percent interest would yield as much as £100 annually for an initial investment of £70. These sharers in the Lord Chamberlain’s Men thus became housekeepers to the Lord Chamberlain’s Men, keeping for themselves

the money they would have paid to an unrelated housekeeper. The housekeepers, other than the Burbages, conveyed their interests to William Leveson and Thomas Savage, who reconveyed the interests to them as tenants in common so that they could make transfers of their interests.<sup>89</sup> Kempe quit the troupe in 1597 and transferred his interest to the other housekeepers. In 1600 Robert Armin replaced him as the comic player of the troupe.

The ingenious adaptation of theatre ownership by the company may have been prompted by the freedom of association that individuals found after the collapse of the feudal structure and the role of the “land lord.” The players were free to own the theatre they had earned. Land had monetary value and the sharers had “possessive individualism.”

The construction of the open-air Globe was undertaken by Streete, who agreed to complete the work within twenty-eight weeks. Because of the site’s proximity to the Thames and the unstable soil, piles were needed to secure the foundation; their installation took sixteen weeks. The posts (some thirty feet long) taken from the Theatre were finished with wattle and daub that was covered with white plaster. The stage was oriented on an axis forty-eight degrees east of true north in direct alignment with the mid-summer solstice.<sup>90</sup>

The roughly circular “wooden O”<sup>91</sup> bore the motto *Totus mundus agit historionem* literally “The whole world plays the actor” but popularly “All the world’s a stage.” Theatres were round or octagonal and about eighty feet in diameter.<sup>92</sup> At the back was the *tiring house* where the players put on their costumes. The theatre was surmounted by a flag showing Hercules bearing the world on his shoulders. There are no surviving contemporary images of the Globe. One by Claes Visscher is sometimes offered;



however, Visscher had never seen the Globe (or in fact been to London) and had based his work on an earlier engraving. Like other outdoor theatres of the time, its design followed the design of the inns from which they evolved. Unlike the modern stage that is set behind a proscenium and separated from the audience by the orchestra pit, the Elizabethan stage (a so-called “apron stage”) was at the back of the theatre (just as it was set up at the back of the courtyards of the inns), and projected just less than fifty feet into the theatre. The better seats were on a gallery level corresponding to the rooms at the inns and the less expensive seating was standing room on the ground.<sup>93</sup> The stage could not fit more than a dozen actors at a time. A trap door served for burials and disappearances. At the back of the stage, two doors allowed for exits, entrances, and the appearance of processions. The thatched roof or *shadow* standing on two pillars provided shelter from the rain and direct sunlight. A second storey at the back of the stage offered a balcony for scenes such as the one in *Romeo and Juliet*.

In May 1599 the Globe was referred to as “in occupatione Willielme Shakespeare et aliorum.” After the astrological consultation that was commonly used to determine openings – for it was propitious to have a “new moon to open a new house” – the Globe opened with *Julius Caesar* on the summer solstice June 12, 1599. Venus and Jupiter were in the sky and the high tide at Southwark expedited travel across the Thames. *Julius Caesar* was followed by *Othello*, *Macbeth*, and *King Lear*.

At first, the Globe offered afternoon performances throughout the year; after the Blackfriars Theatre opened (see Section III.D), it offered performances only from May to September. The Globe had a capacity of twenty-five hundred to three thousand, which was considerably more than the population of Stratford. A proportionately sized theatre

in modern Manhattan would have a capacity of nearly one hundred sixty thousand. Real cannon were used to shock the audience; the odor of gunpowder lingered. There was no painted scenery but there were decorations.<sup>94</sup>

During a performance of *Henry VIII* on June 29, 1613, the Globe burned to the ground when a blank volley ignited the thatched roof that had been used instead of tile to save construction costs. Fortunately, no one died and the costumes and play books were saved; otherwise the company would have been bankrupt. In fact, those play books may be the only complete copies of half of Shakespeare's plays. The reconstruction cost required each sharer to contribute between £50 and £60. Some speculate that Shakespeare sold his interest in the Globe in order to avoid that expense, because his interest in the Globe does not appear in his will three years later. The reconstruction of the Globe was completed in almost exactly one year, and it reopened in June 1614.<sup>95</sup> The Globe had succeeded because of Shakespeare's plays, Richard Burbage's acting, and the ingenious arrangement by which the sharers were also housekeepers.

Shakespeare was certainly familiar with leases such as Burbage's lease of the Theatre. The lease – or term for years – and its transience (or determination) lend themselves to comparisons to love or beauty in several sonnets:

- (a)     So should that beauty which you hold in lease  
          Find no determination; then you were  
          Your self again after yourself's decease,  
          When your sweet issue your sweet form should bear.  
          Sonnet 13, lns. 4-8

Shakespeare is urging a youth – perhaps his early patron Henry Wriothesley, Earl of Southampton – to marry and have children.

- (b)     Rough winds do shake the darling birds of May,  
          And summer's lease hath all too short a date. Sonnet 18, lns.  
          3-4

Here “date” means end point.

- (c) Speaking of devoted love, Shakespeare wrote:  
It fears not Policy, that heretic,  
Which works on liars of short-numbered hours.  
Sonnet 124, lns. 9-10

There are appearances of “leases” in contexts that do not imply a brief duration:

- (d) Not mine own fears, nor the prophetic soul  
Of the wide world, dreaming on things to come,  
Can yet the lease of my true love control,  
Suppressed as forfeit to a confined doom. Sonnet 107, lns.  
1-4
- (e) Macbeth rejoices that he “Shall live the lease of nature,”

*Macbeth* 4.1.115, and not be killed.

- (f) Cade says “But now am I so hungry that if I might have a  
lease of my life for a thousand years, I could stay no longer,” *2 Henry VI* 4.9.4-5, as he  
searches for food.

- (g) When told that Francis has a five year apprenticeship at an  
inn, Prince Harry says “Five years! By’r Lady, a long lease for the clinking of pewter.” *I  
Henry IV* 2.5.40-41.

- (h) Railing against Richard’s leasing the crown’s property,  
John of Gaunt says England “Is now leased out . . . / Like to a tenement or pelting farm,”  
*Richard II* 2.1.59-60, and says of Richard “Landlord of England art thou now, not king,”  
(2.1.113) and “wert thou regent of the world / It were a shame to let this land by lease”  
(2.1.109-110).<sup>96</sup>

- (i) Finally, in an imaginary address to his beloved Silvia,  
Valentine says:

O thou that dost inhabit in my breast,  
Leave not the mansion so long tenantless

Lest, growing ruinous, the building fall  
And leave no memory of what it was. *The Two Gentlemen of Verona* 5.4.7-10

The Globe Theatre incident recalls Shakespeare's occasional humorous use of a principle of the land law. In *The Merry Wives of Windsor*, Ford doubts his wife's honesty, that is, fidelity in modern terms. To test her, he assumes the name Master Brooke and, acting like her suitor, enlists Falstaff to act as a go-between. When Falstaff asks Brooke (in fact Ford) "Of what quality was your love, then?" Brooke answers "Like a fair house built on another man's ground, so that I have lost my edifice by mistaking the place where I erected it" 2.2.193-194. The legal principle is that what is affixed to the ground is part of the ground (*quicquid plantatur solo solo cedit* and *aedificatum solo solo cedit*). This rule arose from the belief that land is more important than the chattels on it (and that buildings are nothing more than an assembly of chattels). The Globe Theatre began as "a fair house built on another man's ground."

#### **D. The Blackfriars Theatre**

On August 9, 1608, Shakespeare and six others – by then the King's Men – leased the Blackfriars Theatre for twenty-one years at £40 per year, or £5, 14s, 4p. for each of them.<sup>97</sup> Five of the seven had been sharers of the Lord Chamberlain's Men. With the addition of the Blackfriars Theatre, the King's Men were the first company to operate from two theatres; the open air Globe was used in the summer months from May to September, and the enclosed hall-style Blackfriars Theatre was used in the colder and darker winter months.

With a capacity of six hundred (as opposed to the Globe's capacity of three thousand), the Blackfriars Theatre was nevertheless more profitable because it charged about six times greater admission than the Globe, with a fee of 6p for the cheapest seats

in the distant galleries, a shilling for a bench in the pit, and half a crown for a box. The seating nearest the stage was the most costly, so that poor patrons were out of the sight of the wealthier ones. This pricing scheme has survived.<sup>98</sup> The Blackfriars Theatre offered an opulent “glittering and hushed atmosphere”<sup>99</sup> and was the more prestigious venue.

Because it was enclosed, the Blackfriars Theatre offered candle-lit performances that an open theatre could not. Woodwind and string music (as opposed to the trumpet music found in the Globe) first appeared in the enclosed theatres to entertain theatregoers both before the plays began and between the acts after the introduction of the division of plays into acts.<sup>100</sup> The Blackfriars Theatre became a model for theatres and in that sense was more important than the Globe. The use of artificial lighting to create night and day at the Blackfriars Theatre made it unnecessary for the actors to identify the time of day as they had to do at the opening scenes of *Hamlet* (“’tis now struck twelve. Get thee to bed, Francisco.”) or the time of the murder of Banquo in *Macbeth* (“Give us a light there, ho!”).<sup>101</sup> At the Globe, on the other hand, an evening scene might be conveyed by players carrying torches even if the performance was in the middle of the day. Actors wearing swords were a clue that the action was out of doors because swords were not worn indoors. Still, the spoken words and not the effects brought the plays to life so that when Edgar describes the cliff from which his blind father Gloucester proposes to jump, he says: “Stand still. How fearful / And dizzy ‘tis to cast one’s eyes so low!” *King Lear* 4.5.11-12.

#### **E. The Home on Henley Street**

Shakespeare’s father John had prospered as a glover in Stratford and bought two houses in 1556 – one on Henley Street and one on Greenhill Street – in one of which Shakespeare was to be born.<sup>102</sup> Upon his father’s death in 1601, Shakespeare, as the

oldest son, inherited the house,<sup>103</sup> subject to a life estate interest in favor of Shakespeare's mother Mary.<sup>104</sup>

The canons and order of descent were quite clear and analogous to the descent of the crown.<sup>105</sup> Estates descended lineally to the male children, grandchildren, and so on. They did not ascend. At the beginning of *3 Henry VI*, the weak King Henry proposes to entail the crown to Richard, Duke of York (who became Richard III), if Henry can keep the crown for his lifetime; however, Henry has a son Prince Edward and cannot "so resign his crown / But that the next heir should succeed and reign" *3 Henry VI* 1.1.146-47. Outraged at the suggestion, Queen Margaret "divorces" Henry from table and bed.

Under the earliest rule, called *gavelkind* and common in Wales, Kent and East Anglia, estates passed equally to all the male issue. To avoid fractured estates and assure the provision of services, descent to the eldest male – primogeniture – became the rule. The theme of primogeniture occurs in several plays that uphold the rule, but not without criticism. In *Titus Andronicus*, the older brother Saturninus and the younger Bassianus vie for the throne and the love interest Lavinia; despite confusion and bloodshed, the elder prevails in his claim for the throne and the younger wins Lavinia. *As You Like It* concerns Oliver the malevolent older brother and his mistreatment of the younger Orlando, and raises the question whether the people or the rule is bad. In *King John* a choice must be made between the older (arguably) bastard brother Philip Falconbridge and his younger legitimate brother Robert; although the crown goes to Philip, whom John finds to be legitimate, Robert emerges as a better choice and the policy of primogeniture is cast in doubt.

Mary's life estate enabled her to live in the Henley house for the rest of her life. Upon her death, the estate passed to Shakespeare. Sonnet 92, lns. 1-4 plays on the life estate to say that love and life are coterminous:

But do thy worst to steal thyself away,  
For term of life thou art assuréd mine,  
And life no longer than thy love will stay,  
For it depends upon that love of thine.

#### **F. New Place**

At the age of 33, Shakespeare bought New Place in Stratford. Located at Chapel Street and Chapel Lane (also known as Walker's Street or Dead Lane),<sup>106</sup> New Place was the largest or second largest dwelling in Stratford, described in 1540 as "a praty howse of brike and tymbar"<sup>107</sup> and consisting of ten rooms with fireplaces, five gables, and grounds sufficient for two barns, two gardens, and two orchards. Built at the end of the fifteenth century by Sir Hugh Clopton, New Place had sixty feet of frontage, seventy feet of depth, and stood more than twenty-eight feet high. Before Shakespeare bought it, New Place had been described as "in great ruin and decay, and unrepaired, and it doth still remain unrepaired." However, one of Clopton's descendants remarked that Shakespeare "repaired and modell'd it to his own mind."<sup>108</sup>

New Place had scandalous history of which Shakespeare must have been aware. In 1563, a well-known local scoundrel named William Bott had married his daughter Isabella to John Harper, who promised that Bott would inherit Harper's lands if Isabella died intestate without issue. Bott then assured his daughter's death without issue by poisoning her (and her mother) so that, according to an eyewitness, she "did dye sodenly and was poysoned with rattes bain and therewith swelled to death."<sup>109</sup>

Bott conveyed New Place to an Inner Temple lawyer, William Underhill, who left it to his son also named William.<sup>110</sup> On May 4, 1597, the son William conveyed New House to Shakespeare for £60; the price recited in Elizabethan documents is not always accurate. The sale was effected by a fine described in Section II.F.1(b), but the transfer was not completed. Two months after the attempted conveyance to Shakespeare, William's eldest son Fulke, to whom William had devised his lands, poisoned his father and was hanged. The crown seized New Place for a felony but regranted it to William's other son Hercules when he came of age in 1602. Hercules then completed the transfer to Shakespeare by another fine. Hercules also conveyed to Shakespeare two orchards that were not included in the first sale. Shakespeare paid an additional £60 for the additional land.<sup>111</sup> Shakespeare lived in New House until his death.

Shakespeare owned New House in fee simple: a perpetual, alienable, and inheritable interest, that is the largest estate in land. Shakespeare makes several references to fee simple estates.<sup>112</sup> Only two are used in the sense of an estate in land:

(a) When discussing a proposed military incursion, the Captain says of Poland:

To pay five ducats, five, I would not farm it  
Nor will it yield to Norway or the Pole  
A ranker rate, should it be sold in fee. *Hamlet*  
4.4.9.10 – 9.13

In this context “ranker” means “higher.”

(b) When Iden catches Cade on his property, Cade says “Zounds, here's the lord of the soil come to seize me for a stray for entering his fee-simple without leave.” 2 *Henry VI* 4.9.22 Perhaps representing the new land owning bourgeoisie, Iden kills Cade for his trespass. In this period, Sir Edward Coke (who



figures prominently in the law affecting Shakespeare's life as discussed in Section IV.B.2) popularized an old English proverb in *The Institutes of the Laws of England* (1628): "A man's house is his castle and fortress, and his home is his safest refuge."

Other appearances of fee simple are merely suggestive of someone holding the entirety of an interest:

- (c) The character of the First Lord Dumaine is described by

Paroles:

Sir, for a *quart d'ecu* he will sell the fee-simple of his salvation, the inheritance of it, and cut th'entail from all remainders, and a perpetual succession of it perpetually. *All's Well that Ends Well* 4.3.262-264

An *ecu* was a French silver coin worth five francs. Its name was derived from the shield – O.F. *escu* and L. *scutum* – depicted on it.

- (d) When Mercutio and Benvolio argue about which of them is the more quarrelsome, they exchange:

Benvolio: An were I so apt to quarrel as thou art, any man should buy the fee-simple of my life for an hour and a quarter.

Mercutio: The fee-simple? O, simple. *Romeo and Juliet* 3.1.27-30

Benvolio contradicts himself by giving perpetual estate – the simple – a definite term, and prompts Mercutio's retort.

- (e) In *A Lover's Complaint* 143-147 the distraught lover says:

My woeful self that did in freedom stand,  
And was my own fee-simple (not in part),  
What with his art in youth, and youth in art,  
Threw my affections in his charmed power,

Reserved the stalk, and gave him all my flower.

The meaning is to having given all of herself.

(f) When he is told there is bad news to be reported, Macduff asks whether it affects everyone or is “a fee-grief / Due to some single breast,” *Macbeth* 5.1.197-98. The ensuing report is that his family has been slaughtered.

### **G. The Blackfriars Gatehouse**

On March 10, 1613 Shakespeare bought the Blackfriars gatehouse from Henry Walker for £140, of which £80 were paid in cash and £60 were due one year later. The Blackfriars gatehouse was a “dwelling house or Tenement”<sup>113</sup> located next to the Blackfriars Theatre and near Puddle Wharf from which Shakespeare could cross to the Globe. The gatehouse was presumably purchased by Shakespeare as an investment because by this time he was living in Stratford. The Blackfriars gatehouse “hath sundry back-dores and bye-ways, and many secret vaults and corners.”<sup>114</sup> It had provided lodging to the Prior of Dominicans and was later the headquarters of Catholic intrigue.<sup>115</sup>

The form of the transaction was unusual. Although Shakespeare paid for the gatehouse, title was taken in joint tenancy by him and three trustees, John Hemming, William Johnson, and John Jackson, the first two being theatre associates of Shakespeare and the last being the proprietor of the famous Mermaid Tavern.<sup>116</sup> Joint tenancy is a tenant’s interest that automatically passes to the other joint tenant or tenants upon the joint tenant’s death.<sup>117</sup> The prevailing speculation for this arrangement is that Shakespeare employed it in order to avoid his wife’s dower interest because a widow was barred from a claim on property of which her husband was not the sole proprietor.<sup>118</sup> However, if Shakespeare had survived his trustees, she would have a dowager’s interest.<sup>119</sup> Another theory holds that the joint tenancy expedited the mortgage that was

given the next day to assure payment of the balance of the price. Taking title in joint tenancy was also a means of creating a use (or trust) as discussed in Section II.F.2; in this instance Shakespeare's cotenants would have agreed to follow his instructions for the disposition of the gatehouse. In fact, no one knows why Shakespeare employed joint tenants.

The mortgage appears in minor roles in Shakespeare's work but played a very important role in his life.

Sonnet 134 is an extended metaphorical use of the mortgage:

So now I have confessed that he is thine,  
And I myself am mortgaged to thy will,  
My self I'll forfeit, so that other mine,  
Thou wilt restore to be my comfort still:  
But thou wilt not, nor he will not be free,  
For thou art covetous, and he is kind;  
He learned but surety-like to write for me  
Under that bond that him as fast doth bind.  
The statute of thy beauty thou wilt take,  
Thou usurer that put'st forth all to use,  
And sue a friend came debtor for my sake,  
So him I lose through my unkind abuse.  
Him have I lost, thou hast both him and me;  
He pays the whole, and yet am I not free.

Here, the writer acknowledges that his love interest has gone to his mistress. The love interest has stood surety for the writer and has forfeited himself to the mistress upon the writer's default. The writer would prefer that he was forfeited to the mistress and that she take him instead of the love interest. The mistress has them both, however. The mistress, as a sexual usurer, "put'st forth all to use" to gain both borrower and surety.

The Shakespeare family was involved in a mortgage as discussed in Section IV.D,

## **H. The Lease of Tithe Lands and The Enclosures**

In 1554 the warden of the College of Stratford had leased tithe lands to William Barker for ninety-two years. After the dissolution of the property of the College, those tithe lands passed to the crown and eventually to Stratford. Barker's interest as a tenant was not affected. He later transferred it to Ralph Huband.<sup>120</sup> On June or July 24 of 1605, Shakespeare paid the substantial sum of for £440 for Huband's interest in one half of the tithes of Stratford, Old Stratford, Welcombe, Bishopton, and the parish of Stratford-upon-Avon.<sup>121</sup> In addition to that payment, Shakespeare paid £5 each year to Huband's creditors and £17 each year to the Stratford Corporation.<sup>122</sup> The lease was for "tithes of corn, grain, blade [broad leaves of grasses] and hay" and returned about £60 annually to Shakespeare.

On July 9, 1614 a fire swept through the thatched roof houses of Stratford, destroying fifty-four of them, and causing more than £8,000 of damage in two hours.<sup>123</sup> The entire town was nearly consumed.<sup>124</sup> On the next day, the richest man in Stratford John Combe died, leaving much of his fortune to his nephew Thomas Combe. William Combe, the older brother of Thomas, decided to initiate the enclosure of the open fields at Old Stratford, Bishopton, and Welcombe. Two other wealthy landowners Arthur Mainwaring and William Replingham joined Combe.<sup>125</sup>

The enclosure would have affected Shakespeare. If his Welcombe tithe lands were converted from arable land to pasture, their productivity and his income (which was based on corn, grain, grass, and hay) would have decreased. On the other hand, if agricultural use was more productive, he would have gained. The Stratford Corporation was concerned as well because it held the reversion of Shakespeare's tithes.<sup>126</sup> The enclosure raised the threat of dislocation discussed in Section II.E. Thus, the proposed

enclosures created a conflict among rich and poor and the community and the wealthy landowners.

Shakespeare made an advantageous agreement, which assured that his interests were protected even if the interests of the Stratford community were not. He got an indemnity from Replingham “for such losse, detriment and hinderance . . . by reason of anie inclosure or decaye of tyllage there ment and intended by the said William Replingham.” With the indemnity, Shakespeare was no longer affected by the enclosure. His own feelings about enclosure are found in an ambiguous statement he made to John Greene, one of the local opponents of enclosure. Shakespeare is reported to have said “that I was not able to bear the enclosings of Welcombe.” Unfortunately the sense of the word *bear* is unclear because it may have meant “to endure” or “to promote.” However, Shakespeare left his sword to Thomas Combe so there were evidently no hard feelings.

In any event, the enclosures were ultimately unsuccessful when Chief Justice of King’s Bench Sir Edward Coke ruled against enclosure at the Lent Assizes of 1616 in Warwickshire. By then Shakespeare was dead.<sup>127</sup>

## **I. Lesser Business Dealings**

By 1598 Shakespeare had earned the reputation of a wealthy investor. Abraham Sturley of Stratford wrote to Richard Quiney (whose son Thomas later married Shakespeare’s daughter Judith) that “our countriman, Mr. Shaksper, is willinge to disburse some monei vpon some od yardeland or other att Shottery or neare about vs.”<sup>128</sup> There is no record of Shakespeare making any investment at that time perhaps because wet summers of 1594, 1595, and 1596, and murrain in 1595 led to a poor corn harvest, high prices, poverty, and discontent.<sup>129</sup> On October 25, 1598, the same Richard Quiney wrote a letter to Shakespeare as “Loveinge Contreyman” asking for a loan of £30 to pay

debts he had incurred in London, perhaps when he was there on Stratford's business. There is no record of the letter (which was found among Quiney's records) being received or the loan being made.

On May 1, 1602, John Combe and his uncle William Combe sold Shakespeare a freehold of one hundred seven acres of arable land with common pasture appurtenant to it and twenty acres of pasture and rights of common in Bishopstone and Welcombe for £320. This land is often called four yardlands, which was a measure that varied by locale but was usually about thirty acres. Shakespeare was evidently not in Stratford then because his brother Gilbert received the deed.

In September 1602, Shakespeare bought a copyhold interest to a quarter acre including garden and cottage on the south side of Chapel Lane,<sup>130</sup> across the street from New Place and perhaps used for servants' or gardeners' quarters.<sup>131</sup>

Copyhold grew out of unfree – or villeinage – tenure when the shortage of labor after the Black Death gave villeins greater value. In return for working the lord's demesne lands, the villeins or tenants were given ten to thirty acres for their own use and benefit. The tenant's rights and duties were memorialized in a copy of the manorial court roll, which was enforced according to the custom of the manor. Copyholds could be hereditary.

Since the tenant's rights against its lord could not be expected to be fairly enforced in the lord's courts, the courts of equity and the common law courts eventually took jurisdiction of the tenant's claims and required the lord to obey the custom of the manor. This intrusion into the lord's sovereignty further eroded the feudal system.

Shakespeare may have referred to copyhold tenure in *Macbeth* 3.2.38-39:

Macbeth: Thou know'st that Banquo and his Fleance lives.  
Lady Macbeth: But in them nature's copy's not eterne.

This exchange has led to a great deal of scholarly discussion.<sup>132</sup> Is it a reference to copyhold or merely a way of saying that Banquo and Fleance are mortal like other of objects of nature? The main objection to the “copyhold school” is that copyhold was not terminable at will but was a protected interest. Shakespeare does not use *copyhold* at all and does not use *copy* in this ambiguous sense in other works.

A few months after the purchase of New Place, Shakespeare was reported to be hoarding ten quarters (or eighty bushels) of malt, which was probably more than was necessary for family consumption.<sup>133</sup> Engrossing (or hoarding supplies in bulk) and forestalling (or buying from farmers instead of the open market) were noteworthy offenses, although no action was taken against Shakespeare on account of them; the mention in *Coriolanus* 1.1.71-72 “crammed with grain” may be a sly reference to Shakespeare’s own conduct. Just before he drinks poison and kisses the dead Juliet, Romeo determines to “seal with a righteous kiss / A dateless bargain to engrossing death” *Romeo and Juliet* 5.3.114-15, in which “dateless” means “without end” and “engrossing” means “all consuming.”

## **J. Death and Will**

Shakespeare died on April 23, 1516. The traditional date of his birth may have begun as an effort to have his (possible) day of birth and day of death the same. Shakespeare was buried in the chancel of the Holy Trinity Church where he had been christened. As an owner of church tithes, he was a lay rector and entitled to be buried in the church as opposed to the churchyard.<sup>134</sup> He was buried on April 25. The epitaph whose author is unknown, reads:

GOOD FREND FOR IESVS SAKE FORBEARE,  
TO DIGG THE DVST ENCLOASED HEARE!  
BLEST'E BE YE MAN YT SPARES THES STONES,  
AND CVRST BE HE YT MOVES MY BONES.

The location of the grave near the charnel house may have prompted concern that his bones might be exhumed to make room for another burial<sup>135</sup> just as Yorick's bones were moved to accommodate Ophelia in *Hamlet* 5.1.

Shakespeare's will has generated its own field of scholarship. It is at once enigmatic and pointed. Shakespeare's lawyer Francis Collins first drafted the will in January 1616. Shakespeare signed the will on March 25, 1616. Three of Shakespeare's known six signatures are in this will;<sup>136</sup> wills (after the *Statute of Wills*) and testaments did not have to be signed, or sealed, or witnessed, but often were for convenience of proof. The handwriting of the three page will shows "weakness and malformation"<sup>137</sup> perhaps attributable to spastic cramp or scrivener's palsy that affected prolific writers.

Because oral testaments could be made only by the very ill, a superstition arose that written testaments, and by extension wills, were a portent of imminent death. In *The Merry Wives of Windsor* 3.4.53-57, Anne asks Slender "What is your will?" Misunderstanding, he responds: "My will? 'Od's heartlings, that's a pretty good jest indeed! I ne'er made my will yet, I thank God; I am not such a sickly creature, I give God praise." Similarly, Romeo says "Bid a sick man in sadness make his will," *Romeo and Juliet* 1.1.195. Shakespeare lived only a month after he signed his will.

Shakespeare may have made his will in anticipation of impending marriage of Shakespeare's daughter Judith to Thomas Quiney. Without a special license and thus in violation of ecclesiastical law (which had accelerated the wedding plans of Shakespeare and Anne Hathaway), Judith and Thomas Quiney were married during Lent in February



1616. Five years younger than Judith, Thomas ran a tavern and was the son of Richard Quiney who had asked Shakespeare for a loan in 1598 (see Section III.I). Shakespeare left Judith: £150 of which £100 was payable immediately; £50 on the condition that she renounce any claim to the copyhold of the cottage where her sister lived on Chapel Lane across from New Place; and an additional £150 if she or her heirs were living three years later, and if not, then to Shakespeare's granddaughter Elizabeth Hall. However, unless her husband gave her equivalent value in land, she could receive only the interest on the second £150 payment. Shakespeare's evident mistrust of Quiney was justified in March when Quiney was charged in the ecclesiastical courts with fornication having impregnated Margaret Wheelan who died in childbirth along with their child. Quiney was ordered to do public penance but instead paid five shillings. Some speculate that his marriage to Judith was intended to cover up the expected scandal. In fact, Shakespeare did not refer to Quiney by name but wrote "such hosband as she shall att thend of the saied three Yeares be married unto."

Shakespeare left his sister Joan £20 and his clothes. In addition, she was allowed to stay at the Henley Street residence at a nominal rent. He left three of her four sons £5 each but evidently forgot the fourth. He left his plate to his granddaughter 'except a brod silver gilt bole' that went to Judith. He left £10 to the poor of Stratford and miscellaneous gifts such as money for rings to some of his colleagues (two of whom assembled the First Folio).

The bulk of Shakespeare's estate went to his daughter Susanna: "all the rest of my goods Chattels Leases plate Jewels & household stuffe whatsoever." This devise would have included New Place, the Henley Street residence, the Blackfriars gatehouse, and the

lands around Stratford.<sup>138</sup> The evident goal of these bequests was to keep his holdings together.<sup>139</sup> The devise to Susanna was by fee tail: a grant “to A, and the male heirs of his body.” The “tail” derives from the French *tailer* “to cut” because the universe of heirs was tailored to the grant. The tail was imposed to keep the grantee from selling the estate thus defeating the inheritance of descendants, and also to assure the grantor of a reversion if there were no heirs of his body. Shakespeare selected a fee tail male so that the property went to Susanna’s eldest surviving male son and then his son and so on. Unfortunately, all of Shakespeare’s grandchildren died childless and the plans for his estate were frustrated.

Shakespeare employs the proper terminology when Lear transfers part of his kingdom “To thine [Goneril’s] and Albany’s issue / Be this perpetual,” *King Lear*, 1.1.57-58. However, Shakespeare misuses the tail in two ways in *III Henry VI*, 1.1.195-201:

I here entail  
The crown to thee and thine heirs for ever,  
Conditionally, that here thou takes thine oath  
Cease this civil war, and whilst I live  
To honor me as thy king and sovereign,  
And nor by treason nor hostility  
To seek to put me down and reign thyself.

Contrary to proper practice, he omits heirs of the grantee’s body and his successors’ bodies, and he does not create a present estate in possession. He does, however, convey the conflicting preferences of King Henry and Queen Margaret for the governance of the country. Henry endeavors to take his son Prince Edward’s rightful inheritance.

For purposes of Shakespeare’s work, the most important part of a fee tail was that it could be barred, or destroyed, by proceedings known as common recoveries or fines, as

discussed more fully in Section I.C. He demonstrates his awareness that tails could be defeated in *All's Well that Ends Well* 4.3.263.

The bequest to his wife of thirty-four years Anne has attracted the attention of historians for many years. By an interlineation on the third and last page of his will, he provided “Item, I gyve unto my wief my second best bed with the furniture.” In this context, the furniture would have involved the sheets and covers. This small bequest together with the omission of any of the customary words of affection such as “my loving wife” have tempted historians to believe that Shakespeare harbored ill will toward his wife.

On the other hand, historians have suggested that the best bed was reserved for guests and that the second best bed would be the marital bed with its associations of love and fidelity. It may also have been an heirloom or the one in which he was lying when he died. Other historians point out that there is no need to make a specific provision for Anne since she had a one-third interest in her husband’s estate as the widow’s portion, or dower, which dated to the thirteenth century.<sup>140</sup> Although the dower rights with respect to land were consistent throughout England, research regarding dower has shown that rights as to personal property and dower varied by local custom among London and other parts of England.<sup>141</sup>

Shakespeare’s interest in the Globe is not mentioned perhaps because it had been sold, or perhaps because it was included within the residuary devise to Susanna.

Shakespeare’s interest in the Blackfriar’s Gatehouse is not mentioned either. Since a husband that owned an estate in joint tenancy was not solely seized of it and his interest

was not subject to dower,<sup>142</sup> Shakespeare had bought the Blackfriar's Gatehouse in joint tenancy perhaps with the goal of defeating Anne's dower.

Shakespeare mentions dower several times. When Petruccio talks to Baptista (whose daughter Petruccio hopes to marry), Baptista promises a dowry of £20,000 immediately and one-half his lands after his death. Petruccio responds:

And for that dowry I'll assure her of  
Her widowhood, be it that she survives me,  
In all my lands and leases whatsoever. *The Taming of the Shrew*, 2.1.121-23

That the promise is more generous than the law provides is meant to demonstrate his ardor.

In *A Midsummer Night's Dream* 1.1.3-6, Theseus compares how slowly time passes before his marriage to Hippolyta "to a stepdame or a dowager / Long withering out a young man's revenue," that is spending the dower that will be his inheritance. A child must wait to inherit while its mother lives.

A wife could lose her dower if her husband was convicted of a felony or treason; however, Mariana inherits the possessions of her disgraced husband Angelo by the Duke's kind intercession *Measure for Measure* 5.1.

## CHAPTER IV

### SHAKESPEARE AND EQUITY

#### A. In Shakespeare's Works

Shakespeare uses the term “equity” only four times and differently each time.

When unsuccessfully defending against a charge of treason, Gloucester says:

Foul subornation is predominant,  
And equity exiled your highness' land, *2 Henry VI* 3.1.145-146

This sense of “equity” is of “fairness.”

When King Lear conducts a trial of his daughters, he arrays a court consisting of Edgar, the Fool and Kent, and says to the Fool, “And thou, his yokefellow of equity / Bench by his [Edgar's] side” *King Lear* 3.6.31-32. Here, the reference is to the Chancery court, which was a court of equity as discussed in Section IV.B. A moment before the commission is established, Kent urges the crazed Lear to “lie down and rest upon the cushions,” in a reference to the woolsack on which the chancellor in the House of Lords sat.<sup>143</sup>

King Philip of France mentions “downtrodden equity” when his army meets King John's at Angiers, *King John* 2.1.241. The reference seems to be to the disputed title to the English throne arising out of the Falconbridge bastardy matter discussed in Section II.E and suggests a right that should be protected by the Chancery court's equitable powers.

By far the most interesting use is in *I Henry IV* when Prince Hal and Poins have left Falstaff with Bardolph to rob the travelers. Between that robbery and the re-entry by Prince Hal and Poins to attack Falstaff and his cohorts (who surrender what they have stolen), Falstaff uncharacteristically exclaims “there's no equity stirring” 2.3.8. This

reference compels an exploration of an important part of the English judicial system and of a possible means of individualization of Shakespeare's time.

## **B. The Court System**

Before that exploration can begin, familiarity with the Elizabethan judicial system is necessary. The three common law courts that sat at Westminster Hall since the Magna Carta: the King's (or Queen's) Bench, the Court of Common Pleas, and the Court of Exchequer. Across from them were the Court of Chancery and Court of the Lord Chancellor.

William the Conqueror established the Court of Exchequer to have jurisdiction over matters involving the crown's revenue. Its name derives from the checkered cloth that covered its table and served to mark sums and score counters.

The Court of Common Pleas administered justice between the crown's subjects involving matters such as property, debt and trespass. These proceedings were slow, expensive, and complicated. The requirement of quite specific pleading frequently led to trivial errors and injustice. As a result this court was not as popular as the others. Appeals from Common Pleas were heard by the King's Bench.

Originally the court in which the king sat, the King's (or Queen's) Bench had jurisdiction over civil matters, criminal matters (pleas of the crown), and appeals from Common Pleas. When the court was not in session at Westminster Hall, two or three judges would "ride circuit" together, spending a few days at each county seat. They conveyed not only a centralized and increasingly uniform law, but also the policy and will of the crown.

The Court of Chancery began as an administrative and political office because it supervised the crown's correspondence and kept the Great Seal that authenticated royal

instruments. “The Chancellor, its presiding officer, was the holder of high political office (whose title derives from a *cancellando* referring to his right to cancel letters patent), close to the person of the King.”<sup>144</sup> Until the Reformation, the Chancellor had been an ecclesiastic since only churchmen were conversant in writing when Chancery was established. The Court of Chancery heard cases involving uses and trusts (see Section II.F.2) and ones that the common law courts could not address adequately such as mortgages or fraud.

Chancery provided “equity” which Sir William Holdsworth defined as “the conception that justice ought to be done even at the cost of non-compliance with the strict letter of the law,”<sup>145</sup> and which S.F.C. Milsom called the “secularization of conscience.”<sup>146</sup> Instead of ordering a party to pay damages, it would order a party to do (or not to do) something that should (or should not) be done in “good conscience.” Standing in contrast to the letter of the law, equity was certain to conflict with the common law.<sup>147</sup> Moreover, as the expression of the crown’s justice, Chancery’s conflict with the common law would have political consequences.

### **C. The Legal Backdrop**

#### **1. *Statute of Praemunire***

A recurrent question in the early development of English law was reception or rejection of Roman law as reflected in the shifting boundary between ecclesiastical courts and royal courts. The pope, for example, had forbidden English bishops to recognize the decisions of royal courts regarding ecclesiastical patronage. The battle between these courts had been joined when King Stephen (1135-1154) prohibited the study of civil law at Oxford four centuries before Shakespeare was born. As a result of the ecclesiastical courts’ assertion of jurisdiction over the judgments of the king’s courts, (1) “people . . .

have been drawn out of the realme to answer of things, whereof the cognizance thereof pertaineth to the kings courts,” (2) “the judgements given in said court could be impeached in another court in prejudice and disherison of our lord the king,” and (3) this has led to “the undoing and destruction of the common law.”<sup>148</sup> Although there had been similar statutes before it, the enduring *Statute of Praemunire*<sup>149</sup> was passed in 1353. Its name is derived from the writ that initiated an action for its violation: “*Praemunire facias* [the defendant]” or “cause [the defendant] to be forewarned.” In the words of Coke’s *Institutes*:<sup>150</sup>

The effect of the statute of 16 R. 2. [*Praemunire*] is, if any pursue or cause to be pursued in the court of Rome, or elsewhere, any thing which toucheth the king, against him, his crowne and regality, or his realme, their notaries, procurators, &c. fautors, &c. shall be out of the kings protection.

The penalties were imprisonment, forfeiture of lands and goods, and loss of the king’s protection.

*Praemunire* had been written to limit the jurisdiction of the ecclesiastical courts and papal authority in England. However, the oblique wording did not specify its goal. More directly on point was the *Statute of Prohibition* (1403) that provided in part:

After judgment rendered in the courts of our lord the king the parties and their heirs shall be in peace until the judgment is reversed by attain or writ of error.<sup>151</sup>

In *Henry VIII*, 3.2.341, Suffolk characterizes Cardinal Wolsey’s conduct in becoming a legate and putting the papal authority ahead of the king’s as “Fall[ing] into th’ compass of a praemunire” and recites the consequences.

## **2. Common Law v. Chancery**

During the Elizabethan period an analogous issue arose among the English courts themselves as opposed to the dispute among English courts and ecclesiastical courts:



could Chancery (which suffered from the taint of its origin as a Roman ecclesiastical court) enjoin enforcement of a judgment of the King's Bench or Common Pleas? This conflict would affect Shakespeare's life.

What was Chancery to do when a matter came to it that appeared to be a miscarriage of justice? Could it give relief from an unjust award of damages by enjoining the complainant from enforcement of the judgment? If so, Chancery stood above Parliament and above the jury system. If not, the crown as the fountain of justice was thwarted.

Although the legal issue can be framed as the finality of judgments or *res judicata* – how often can the same matter be litigated – there are more subtle questions. Is redress to Chancery an impermissible method to appeal an adverse judgment? How can a properly awarded judgment according to substantive rules be said to be just if it can be set aside by another set of rules? If so, are the substantive rules wrong? The political issue, however, concerns the primacy of either the common law, or the crown (through its prerogative courts). As it was stated then, does the decision of one supersede the decision of twelve? The judges of the King's Bench believed that Chancery subverted the common law. In an effort to reconcile the arguments Francis Bacon<sup>152</sup> suggested that Chancery did not undo the common law but merely corrected the “corrupt conscience” of the successful litigant.

The conflict culminated in two cases decided during Shakespeare's lifetime. The first was Throckmorton v. Finch in 1597.<sup>153</sup> In that case, the crown had leased land to Throckmorton's nephew at favorable rent but on the condition that the lands be forfeited if the rent was not paid within forty days after it was due. After a default in payment, the

Queen recovered the lands and leased them to a third party who leased them to Finch.

Throckmorton sued in Chancery to set aside the lease to Finch; the basis for relief was the alleged robbery of Throckmorton's servant when he was on his way to pay the rent. The Queen, despite (or because of) having a direct interest in the outcome, and despite a lapse of twenty-one years between the forfeiture and its enforcement, referred the matter from Chancery to the King's Bench who ruled unanimously that equity could not relieve a judgment at law:

they all after divers hearings, and conferences, and consideration had of the laws and statutes of the realm, unanimously resolved, that the lord keeper could not after judgement given relieve the party in equity, although it appeared to them, that there was apparent matter in equity. And amongst others, the judges gave this reason, that if the party against whom judgement was given, might after judgement given against him at the common law, draw the matter into the chancery, it would tend to the subversion of the common law, for that no man would sue at the common law, but originally begin in chancery, seeing at the last he might be brought thither, after i.e. had recovered by the common law.<sup>154</sup>

In *Falstaff and Equity: An Interpretation*, Judge Charles E. Phelps relates a more personal basis for the Queen's interest. Throckmorton's daughter had been one of her maids of honor and had scandalized the crown with her alleged imprudent conduct with Sir Walter Raleigh who was rumored to be romantically involved with the Queen.<sup>155</sup>

In the Earl of Oxford's Case,<sup>156</sup> Lord Chancellor Ellesmere (who had unsuccessfully represented Throckmorton) enjoined enforcement of a judgment for fraud handed down by the King's Bench. Lord Chief Justice Edward Coke of the King's Bench (who had successfully represented Finch) indicted several of the parties for *praemunire*. Consistent with his belief that the crown was the wellspring of justice, King James I, who had transferred Coke from Common Pleas to King's Bench in an effort to avert this standoff, resolved the judicial crisis by supporting his prerogative court of

Chancery. Adopting the solution proposed by Bacon, the rule sought to avoid the troublesome issues of “right” and “wrong” common law decisions by emphasizing the process and the role of the prevailing litigant:

Where a judgment is obtained by oppression, wrong and a hard conscience, the chancellor will frustrate and set it aside, not for any error or defect in the judgment, but for the hard conscience of the party.

Coke was dismissed a few months later. Coincidentally, Ellesmere as Lord Chancellor had supported the Welcombe enclosures that Coke had prohibited (see Section II.H), and this is the same Edward de Vere, Earl of Oxford, who is suggested as the author of the plays (see Appendix 1).

#### **D. The Shakespeare’s Suit**

With that background, the meaning of Falstaff’s remark that “there’s no equity stirring” becomes clearer. Just at the time of the first performance of 2 *Henry VI* in 1597, Shakespeare’s family had a matter pending in the court of equity. Falstaff’s odd expression would have been readily understood to the audience who knew of the ongoing conflict between law and equity, and perhaps knew of Shakespeare’s own stake in the matter. For Phelps, it is at once a timeless reference to the legal issue, an immediate joke to the audience, and a personal revelation of the playwright.<sup>157</sup>

In 1578 or 1579, Shakespeare’s parents John and Mary borrowed £40 from Edmund Lambert, who was married to Mary’s sister Joan, and to secure repayment mortgaged a property – perhaps called the “Asbies” – which consisted of a house on sixty acres about three miles from Stratford. The property had been in the Arden family. The transaction may have been a scheme to protect John’s curtesy from his creditors or to avoid the risk of the confiscation of lands held by recusant Catholics<sup>158</sup> of which John may have been one. The loan was due by Michaelmas (September 20) 1580.

Shortly before the mortgage was made, the property had been leased to George Gibbs for twenty years at a nominal annual rent of eight bushels of wheat and barley beginning Michaelmas 1580. (Leases were often used to defraud creditors.) The lease was still in effect in 1597 when the Shakespeares' suit in Chancery was lodged. The lease did not play a part in the subsequent events, although Lambert suggested that the Shakespeares were motivated by a desire to charge a higher rent on releasing.

The Shakespeares claimed that they tendered timely repayment and that Edmund Lambert refused to accept it because the Shakespeares owed other amounts to him (and there is evidence of this). It is also possible that John may not have tried to repay the loan. In any event, Edmund died and his son John inherited his estate. In 1587, the Shakespeares threatened suit to recover the property. On September 26, 1587, John Lambert agreed to pay an additional £20 to settle the matter, but reneged on his agreement. In 1589 the Shakespeares commenced an action in the Queen's Bench to recover the promised £20. There is no record of the outcome of that action, which languished unresolved for eight years, until November 24, 1597 – just nine days after the decision in Throckmorton v. Finch –when the Shakespeares commenced an action in Chancery seeking reconveyance of the property; presumably, the property was worth more than £20.

The Shakespeares again averred their tender of £40 and Lambert's refusal of it unless other money owed to him by the Shakespeares was also paid. John Lambert responded simply that payment had not been made and that the property was forfeited as a result. The Shakespeares' replication reiterated their first averment. Despite the

appointment of commissioners to examine witnesses, there is no record of a conclusion to the litigation.

The senses of Falstaff saying that there was “no equity stirring” may mean that the Shakespeares had lost the 1589 case in the Queen’s Bench and that the Chancery court would not bestir itself to reverse that judgment. On the other hand, the 1597 case in Chancery sought a different judgment – not one for money but rather one for reconveyance. Perhaps the Shakespeares believed that this distinction in the desired relief would be within Chancery’s jurisdiction and Falstaff simply meant that Chancery had not yet acted on the claim.<sup>159</sup>

In a different sense, however, the issue may be framed as individual conscience versus the law of the land. Just as a court of equity can exercise its conscience by extending or restricting a statute of the realm, an individual can consider what is right or wrong conduct. Is this what Shakespeare has in mind when Hamlet observes “ . . . for there is nothing either good or bad but thinking makes it so,” *Hamlet* 2, 2.250-51.

## CHAPTER V

### LEAVING THE AGE OF SHAKESPEARE

The most remarkable accomplishment in the age of Shakespeare may have been the ability of the English to feed themselves. Reversing stagnant growth since the Black Death, the population grew rapidly, wages fell, and prices doubled between 1500 and 1540 and doubled again between 1540 and 1560. The higher prices encouraged sales at market in preference to subsistence farming. The influx of gold and silver from the New World also led to inflation. In a century, an abundance of land was replaced with a shortage, a labor shortage was replaced with a surplus, and high wages were replaced with lower ones. Poverty and unemployment led to the *Poor Laws of 1601*.

In the words of G.M. Trevelyan:<sup>160</sup> “In the reign of Elizabeth . . . the industrial, commercial, and social system of the country was brought under national instead of municipal control.” For example, the *Statute of Artificers* (1563) legislated the seven year period of apprenticeship at the expense of the traditional local guild system. Perhaps inspired by Sir Francis Drake’s circumnavigation of the world in 1577-80 and his success against the Armada in 1588, merchant ships brought luxury goods from the New World, West Africa, and the Mediterranean to the emerging middle class. Tobacco from the Americas was a tremendous boon to England’s trade. Trevelyan also observed that “The greatest social change in Elizabeth’s England was the expansion of overseas enterprise.”<sup>161</sup> These sentiments are certainly exemplified by the voyage to such exotic places as “plantations” in the “brave new world,” described in *The Tempest* 5.1.186 written at the end of Shakespeare’s career.<sup>162</sup>

The economic history of the sixteenth century could almost be told by reference to the wool trade.<sup>163</sup> The century began with the exportation of raw wool. When it

became profitable to finish the wool domestically, sheep raising, carding, and spinning at the cottage gave way to weaving and dying in town for storage and export. These tasks were coordinated by the “clothier” in an early form of industrialization. Seeing profits in a shepherding, landowners enclosed their fields with resultant dislocation and unemployment. The seaports and London and the crown (as it struggled to support itself) profited from the duties on exports.

The language sustained changes and, with the arrival of the printing press, supported national unity. The age of Shakespeare saw the increased power of the individual, individual consciousness, and a concomitant elimination of personal loyalties to anyone other than the state. Trevelyan notes the curious analogy to the Protestant elimination of everything between the individual and God and the Elizabethan elimination of everything between the individual and the state.<sup>164</sup> The class distinctions based on social origin faded with the rise of a middle class and a redistribution of wealth. The rule of the nobility in the social, political and judicial affairs of the country was diminished. The son of a glover from Stratford could pursue a successful career as a London Playwright, earn a coat of arms, and return to live in one of the largest homes of his birthplace.

Geoffrey Elton wrote:

The century and a half that followed upon the accession of Henry VIII in 1509 was to witness a series of developments which, though they drew upon the medieval experience of the English polity, amounted to a whole bundle of transformations the sum of which provided an unfailingly united and centralized kingdom with its own national civilization, so well centralized that it could afford to allow diversity and liberties, and in the end even real civil war, to endure without endangering the fundamental fact of national identity.<sup>165</sup>

The emergence of appreciation of an individual's worth or what may be called possessive individualism coincided with the rise of a nation as a result of Adam Smith's "invisible hand." New and established principles of land law changed land ownership from a measure of prestige to a measure of prosperity. The individual conscience was contrasted with the rules of law in the conflict between the crown's courts and the common law courts. Each Elizabethan could take a cue from the court of equity and ask whether "there is nothing either or bad but thinking makes it so." *Hamlet* 2.2.244-45.



## FIRST POSTSCRIPT

### WHO WROTE THE PLAYS?

Although no one doubted during his lifetime that he wrote the plays attributed to him, Shakespeare's authorship was first questioned in the late eighteenth century by Herbert Laurence in *The Life and Adventures of Common Sense* (1769); he proposed that Sir Francis Bacon (1561-1626) wrote the Shakespeare canon. In 1780 James Wilmot, who lived near Stratford<sup>166</sup> searched unsuccessfully for Shakespeareana and inexplicably concluded that Bacon was the author of the works attributed to Shakespeare. He passed his suspicions to James Cowell who published them but the issue was dormant for fifty years.

In the 1850s, several articles and pamphlets revived the question and the proposition that Bacon wrote the plays. Then Delia Bacon from rural Ohio became convinced that Bacon (with help from Sir Walter Raleigh) had written Shakespeare's plays. Although there is no known genealogical connection between Ms. Bacon and Sir Francis, she did claim him as an ancestor later in her life. Evidently an engaging and persuasive personality, Bacon managed to enlist (briefly) Ralph Waldo Emerson and Nathaniel Hawthorne in her cause. Her monomania resulted in the publication of *The Philosophy of the Plays of Shakespeare Unfolded* (1857). Apparently as a result of a mystical revelation, Ms. Bacon believed that Bacon had left hieroglyphic communications to her near Shakespeare's grave, and, having failed to find them, spent her last years in an asylum.<sup>167</sup>

Soon ciphers were "discovered" in the plays that "revealed" Bacon as their author. Ignatius Donnelly, who had written *Atlantis: The Antediluvian World* (1882), "found" the

code in *The Great Cryptogram* (1888) which “proved” that Bacon wrote not only most of Shakespeare’s works but also plays by Christopher Marlowe and essays by Michel Montaigne. Helen Keller also favored Bacon. Henry James favored Bacon at times, but finally merely doubted Shakespeare’s authorship.

The problems with attribution to Bacon are that: in contrast to Shakespeare, he was interested (at the same time) in arcane Neoplatonic symbolism and contemporary empiricism; he had a full time career in politics; his forays into creative writing were notoriously unsuccessful; his major creative work consisted of Biblical texts;<sup>168</sup> and his metrical version of the *Psalms of David* was called “rather inferior.” As a trained lawyer, he would not have made the number of legal errors that appear in the plays, and as an East Anglian, he would not have used the Warwickshire vocabulary of the plays.<sup>169</sup> Finally, because although Bacon was alive when the First Folio was composed, he apparently did not offer assistance with some textual problems.

Bacon’s candidacy began to lose favor just before the twentieth century. As early as 1883, C.K. Davis wrote of the Baconian thesis “It is difficult to touch or let alone this vagary with any patience.”<sup>170</sup> Shortly after Davis, Judge Charles E. Phelps noted that “At the time these words were written, in 1892, the delusion [that Bacon wrote the plays attributed to Shakespeare] was still held by many respectable people who have since had their eyes opened by a more thorough investigation.”<sup>171</sup>

Edward de Vere, the 17<sup>th</sup> Earl of Oxford was proposed as another candidate by the schoolmaster Thomas Looney in “*Shakespeare Identified in Edward de Vere the Seventeenth Earl of Oxford* (1920). Looney postulated that Shakespeare was insufficiently educated and of the wrong social class to have written the plays. He

decided upon the characteristics that the author of the plays should have and concluded that Oxford had them. Looney had noticed that poems written by Oxford in his youth seemed similar to *Venus and Adonis* (1593); in fact, the similarity arises from the common practice of using stock images in Elizabethan poetry.<sup>172</sup> Oxford also wrote plays but none survives. With no literary background but a strong distaste for the materialism and individualism of his time, Looney believed he had found in Shakespeare a soulmate who supported a feudal sort of authoritarian social order. The fullest explication of the Oxfordian thesis has been advanced by Dorothy and Charlton Ogburn in *The Star of England* (1952) and Mr. Ogburn in *The Mysterious William Shakespeare* (1984); their essential notions are that Shakespeare lacked the education and social standing to know what he wrote about (but that a lord did) and that Oxford concealed his identity because playwriting was beneath his station and he might have embarrassed some of his peers by his revelations of courtly life.

To overcome the difficulty that Oxford died in 1604 and Shakespeare's plays appeared for nearly ten more years, the Oxfordian thesis maintains that Shakespeare left his remaining plays partially completed to be finished by others. Others respond that modern attribution studies demonstrate that the plays were collaborative efforts and that Oxford would not have collaborated with commoners. The Oxfordians have garnered their share of odd notions. One was that Oxford was Queen Elizabeth's lover and their child was Shakespeare's early benefactor the Earl of Southampton. Another was that Oxford was not only her lover but also her child by her stepfather Thomas Seymour; this theory holds that the "virgin queen" had three other children.

In 1959 the *Journal of the American Bar Association* devoted an issue to the authorship question, and, on the basis of dubious scholarship, seemed to subscribe to someone other than Shakespeare having written the plays. Milward W. Martin wrote a thorough and frequently sarcastic response that collects the arguments for and against Shakespeare's authorship.<sup>173</sup> The essential points of the anti-Stratfordian position are always Shakespeare's lack of education and humble origins.<sup>174</sup> The principal subsidiary points are (following Martin):

- (a) he did not show early talent;
- (b) his name is misspelled;
- (c) his business dealings are unlike an artist;
- (d) in his lifetime, he was never called "Shakespeare from Stratford;"
- (e) the legal terms show the author was a lawyer, but he was not; and
- (f) he did not travel outside England so he could not have written

plays set in Venice or Rome.

Justices William Brennan, Harry Blackman, and John Paul Stevens of the Supreme Court considered the authorship question in a moot court at American University on September 25, 1987.<sup>175</sup> At the outset, Brennan acting as chief justice surprised the other justices by announcing that the Oxfordians had the burden of proving their case, thus giving Shakespeare a distinct advantage. The justices unanimously determined that the case for Oxford had not been proven. Brennan rejected the notion that the breadth of knowledge was too great for anyone but an aristocrat who had been educated at a university although he pointed out numerous factual errors in the plays. He also dismissed the notion that Shakespeare's small town upbringing could not have

exposed him to what he wrote. He was most influenced by the appearance of several plays after Oxford's death in 1604. Blackmun concurred tersely that Brennan had "the legal answer" but "whether it's the correct one causes me greater doubt." Stevens: did not believe Shakespeare was uneducated; took at face value the assembly of the First Folio by Shakespeare's colleagues; and noted that a contemporary Francis Meres had mentioned both Shakespeare and Oxford. However, Stevens acknowledged merits in the Oxfordian points about the absence of writings about Shakespeare in his lifetime and of eulogies on his death. He added that if Shakespeare was not the author there was "high probability" that Oxford was. Justice Stevens closed by observing that the matter was not *res judicata* and recommended that the Oxfordians abandon their conspiracy theories and produce a reason that the Oxford wrote under a pseudonym. He later changed his allegiance to Oxford.<sup>176</sup>

The Boston Bar Association held a mock trial on November 12, 1993 with a federal judge presiding over educated jurors from several disciplines. The jurors favored Shakespeare over Oxford ten to four.<sup>177</sup>

The anti-Stratfordians contend that the bust at Holy Trinity Church in Stratford and the First Folio are parts of a plot to conceal the author's identity because of what the plays said – disrespectfully – about royal life. The "evidence" adduced can hardly be called evidence, let alone persuasive. The absence of proof of irrelevant matters is taken as proof that Shakespeare did not write his plays. Of course, no other author is shown from the "evidence."

To prove their case, the anti-Stratfordians will have to answer these questions (among many) adequately:

(1) whom was Robert Greene attacking in his *Groats-worth of Witte, Bought with a Million of Repentance* (1592) if not Shakespeare? This pamphlet is the first published notice of Shakespeare in London. It is the bitter death-bed autobiography of a minor playwright and player who felt that his companies had used his plays and abandoned him. Greene warned other playwrights to be aware of an “upstart Crow, beautified with our feathers that with his Tiger’s heart wrapt in a Player’s hide, supposes he is well able to bombast out a blank verse as the best of you: and being an absolute *Johannes factotum* is in his own conceit the only Shake-scene in a country.” The “Player’s hide” refers to 3 *Henry VI* 1.4.138, where Shakespeare wrote “O tiger’s heart wrapp’d in a woman’s hide” when the Duke of York speaks to Queen Margaret. The term “upstart” would have meant an uneducated person as opposed to the so-called “university wits” who had written many of the popular London plays. Greene’s attack suggests that by 1592 Shakespeare was a player also attracting attention as a playwright. By that time Shakespeare has probably written three parts of *Henry VI*, *The Two Gentlemen of Verona*, *Titus Andronicus*, and *The Taming of the Shrew*.

(2) why is Shakespeare’s name on *Venus and Adonis* that was published by Richard Field who also came from Stratford and presumably knew Shakespeare, and why would a person of Oxford’s rank or Bacon’s education write the poem’s self-effacing dedication to the Earl of Wriothesly?

(3) why did *The Rape of Lucrece* (1594) follow the same course as *Venus and Adonis* with respect to the publisher and its dedication?

(4) who is meant by “for my name is ‘Will’” in Sonnet 136?

(5) to whom was Francis Meres referring in *Palladis Tamia* or *Wits Treasury* (1598) in which he compared the English poets to those of classical Rome and Greece, and contemporary Italy, with Shakespeare emerging as his favorite? As to theatre Meres wrote “As Plautus and Seneca are accounted the best for Comedy and Tragedy among the Latines: so Shakespeare among [the] English is the most excellent in both kinds for the stage.”<sup>178</sup> His mention of several plays by name helped scholars to date their first presentations.

(6) who is meant by the contemporary references by name to Shakespeare made by Francis Beaumont?

(7) who is the “Shakespeare” identified by name in contemporary documents in the Lord Chamberlain’s Men and the King’s Men companies, both of which performed plays written by that person?

(8) why did a member of his company Augustine Phillips remember Shakespeare in his will, and why did Shakespeare remember members of his company in his own will?

(9) why did John Hemings and Henry Condell, the sole survivors of Shakespeare’s company, assemble and publish the First Folio “to keep the memory of so worthy a Friend & Fellow alive, as was our Shakespeare”? The First Folio indicates that Shakespeare is the author. Published in 1623 in an edition of 1,000 priced at £1 (when the average annual income was £4), the First Folio contains thirty-six plays omitting *Pericles* and *Two Gentlemen of Verona*, which was a collaboration with John Fletcher (1579-1625) to which Shakespeare contributed very little. (Shakespeare and Fletcher

also wrote Cardenio which is lost.) The dedicatory letter to the Earls of Pembroke and Montgomery in the First Folio makes three references to the plays as “trifles.”

(10) why did the contemporaries Ben Jonson and the poet Leonard Digges write dedications in the First Folio that name Shakespeare? Jonson wrote (in part) across from Martin Droeshout’s portrait of Shakespeare in the First Folio (1623): “This Figure that thou here seest put, / It was for gentle Shakespeare cut.”

(11) who was the “Shakespeare” named in the numerous legal documents related to areas in and around Stratford?

(12) who left Shakespeare’s family the bequests in the will by Shakespeare?

Although Elizabethan playwriting was a collaborative effort, and individual attributions were usually not made before 1600,<sup>179</sup> the authority of title pages is generally accepted as determinative of the authorship of early literature.<sup>180</sup> The first attribution of a play to Shakespeare is on the title page of *Richard II* in 1598.

More than fifty candidates have been proposed as a “real” author of the plays.<sup>181</sup> Bacon, Marlowe (who died in 1593 but, as the story goes, faked his death and went in fact to Italy where he wrote under Shakespeare’s name), and the Earl of Oxford have been the most popular ones. “[N]one is now taken seriously.”<sup>182</sup>



## SECOND POSTSCRIPT

### WAS SHAKESPEARE A LAWYER?

More than one hundred fifty years passed after Shakespeare's death before the first recorded suggestion that he was a lawyer. The coincidence of this issue with the authorship issue is illustrated by Mark Twain who wrote: "Shakespeare couldn't have written Shakespeare's works, for the reason that the man who wrote them was limitlessly familiar with the laws and the law courts."<sup>183</sup> Based on his belief that all fiction is autobiographical, Twain was a Baconian. (Twain also believed Queen Elizabeth was a man.)

The industrious Irish barrister Edmond Malone, disappointed by the paucity of biographical material, made the first suggestion that Shakespeare was a lawyer. Malone used Shakespeare's works as though they were autobiographical, thus introducing an unreliable method that continues to bedevil serious scholarship in all fields: "Malone's argument presupposed that in writing his plays Shakespeare mined his own emotional life in transparent ways and, for that matter, that Shakespeare responded to life's surprises much as Malone and people in his immediate circle would have done."<sup>184</sup> Malone's first hint was a footnote to *Hamlet* in an essay on the chronology of the plays. Twelve years later, he expanded the notion based upon a couple dozen legal terms in Shakespeare's works:

His knowledge and application of legal terms, seems (*sic*) to me not merely such as might have been acquired by the casual observation of his all-comprehending mind; it has the appearance of technical skill; . . . there is, I think, some ground for supposing that he was early initiated in at least the forms of law . . . such circumstances . . . seem to me to render it extremely probable.<sup>185</sup>

Seventy years after Malone, W.L. Rushton published *Shakespeare a Lawyer* (1858).<sup>186</sup> Rushton made many more references to the works than did Malone and concluded “Whether William Shakespeare was or was not a member of the legal profession, sufficient has probably been stated to prove that he acquired a general knowledge of the laws of England.”<sup>187</sup> Rushton followed that book with *Shakespeare’s Legal Maxims* which re-ordered the citations in his prior work, offered a chapter with a few allusions to the law of real property,<sup>188</sup> and concluded: “the knowledge and correct application of legal maxims displayed in his work afford the strongest evidence I have yet produced that the great poet must have been, for some time, a student-at-law.”

Lord Campbell, Chief Justice of the Queen’s Bench, wrote *Shakespeare’s Legal Acquirements Considered*<sup>189</sup> in response to an inquiry about Shakespeare’s legal background by his friend J. Payne Collier. Collier, “literary historian, barrister and fabricator of Shakespeareana”<sup>190</sup> was strongly inclined to believe Shakespeare had legal experience. Writing with “a little leisure during this long vacation,” Campbell was at pains to give his friend a fair hearing. He concluded: “no positive answer can fairly be given . . . Were an issue tried before me as Chief Justice at the Warwick assizes, ‘whether William Shakespeare, late of Stratford-up-Avon, gentlemen, ever was clerk in an attorney’s office in Stratford-up-Avon aforesaid,’ I should hold that there is evidence to go to the jury in support of the affirmative, but I should add that the evidence is very far from being conclusive.”<sup>191</sup> From Shakespeare’s reference to the “tripartite indenture,” *I Henry IV*, 3.1.77, Campbell concluded that Shakespeare must have seen one in a lawyer’s office in Stratford. However, Shakespeare had copied the expression from one

of his principal sources, Raphael Holinshed's *Chronicles*. Rushton noted that Campbell made "several mistakes in law."<sup>192</sup>

Campbell was – like Malone and Rushton – equivocal. However, Sir Dunbar Plunket Barton felt compelled to write in *Links between Shakespeare and the Law*<sup>193</sup> that there was nothing "to support Lord Campbell's argument except the pot-pourri of legal scraps which he collected from the plays and poems."<sup>194</sup>

With respect to specific topics in the land law, the modern commentators have been dismissive of Shakespeare's acumen: the "allusions to [mortgages] do not reveal any profound legal knowledge;"<sup>195</sup> the rules of jointure would have been "known to the public generally" and the references to co-ownership are "numerous and unimportant;"<sup>196</sup> the references to the commons are merely the sense of shared and have been called "superficial;"<sup>197</sup> as to Elizabethan dramatists generally, the references to the fee tail "are no more numerous and, if anything, less accurate" than the allusions to estates in fee simple;"<sup>198</sup> and the references to wills and testaments "are for the most part quite general in their application, and demonstrate small knowledge . . . of the law."<sup>199</sup>

After 500 pages of analysis and examples, Edward J. White concluded *Commentaries on the Law in Shakespeare* that the legal terms "are not used as a lawyer would use them"<sup>200</sup> and "[d]espite Shakespeare's frequent use of legal phrases and allusions his knowledge of the law was neither profound nor accurate." Similarly, in *The Law of Property in Shakespeare and the Elizabethan Drama*, Paul S. Clarkson and Clyde T. Warren believed that Shakespeare's legal skills were no more than any alert Elizabethan would accumulate in the course of association with educated people, and that "on the basis of our comparative studies, we do state categorically that the internal

evidence from Shakespeare's plays is wholly insufficient to prove [he was a lawyer]."<sup>201</sup>

Arthur Underhill opened his discussion of law in *Shakespeare's England: An Account for the Life and Manners of His Age* by stating: "Despite Shakespeare's frequent use of legal phrases and allusions, his knowledge of law was neither profound nor accurate, and it is unnecessary to explain such knowledge as he had by assuming that he enjoyed even a legal education as a clerk in [a] lawyer's office."<sup>202</sup> Judge Charles E. Phelps concluded that there is "not a particle of direct proof that he was ever an attorney or an attorney's clerk."<sup>203</sup>

To the contrary, B.J. Sokol and Mary Sokol introduced their *Shakespeare's Legal Language* with: "[Y]et the overall impression given by this Dictionary may well contradict frequently reiterated claims that Shakespeare's interest in law was at best superficial, and that Shakespeare exploited legal ideas, circumstances, and language with no regard for any factor aside from 'poetic' effect. It is our view, derived from cumulative evidence, that on the contrary Shakespeare shows quite precise and mainly serious interest in the capacity of legal language to convey matters of social, moral and intellectual substance."<sup>204</sup> More than a century earlier C.K. Davis had employed a probability analysis to demonstrate that so many adept legal references made "the lawyer the first of poets."<sup>205</sup>

Writing of other Elizabethan dramatists, Clarkson and Warren state:

not only do half of the playwrights employ legalisms more frequently than Shakespeare, but most of them exceed him in the detail and complexity of their legal problems and allusions, and with few exceptions display a degree of accuracy at least no lower than his."<sup>206</sup>

Sokol and Sokol agree with Clarkson and Warren that Shakespeare did not use Elizabethan terminology more frequently than other playwrights. Jonson, the son of a

bricklayer, used twice as many legal allusions as Shakespeare in half the number of plays.<sup>207</sup>

Just as one can argue that Shakespeare's use of legal terms demonstrates his legal training, so also can one respond that his failure to use legal terms – especially those pertaining to the land law – shows an absence of legal training. Shakespeare does not use most of the terms related to tenures: *socage*, *villeinage*, *knights service*, *serjeanty*, *frankalmoin*, *copyhold*, *primer seisin*, *aids*, or *escheat* and *forfeiture* (in their legal senses). Although he uses many of the terms related to estates, he does not use *curtesy*. Despite their prevalence and importance, Shakespeare rarely mentions *uses*. The argument from use founders on the errors and non-technical ways in which legal terms are used. The argument from non-use does not consider that the unused terms may have been inappropriate or poor choices for their possible contexts.

Although there were professional attorneys educated at the Inns of Court, there were many other practitioners that offered legal services:<sup>208</sup> notaries, scriveners, solicitors (who supervised attorneys attached to particular courts but were themselves not regulated), court officials, and experienced tradesmen. Thus, the question whether Shakespeare was a lawyer may be more aptly phrased as “could Shakespeare have acquired his legal knowledge from his own experiences and his exposure to other purveyors of legal skills?”

Elizabethan society was fascinated by the judicial process. O. Hood Phillips estimates that two-thirds of Elizabethan plays have trial scenes.<sup>209</sup> The modern reader may be impressed by the quaint and curious legal terminology even though it may have been part of common parlance among Elizabethans.<sup>210</sup> Shakespeare was creating

entertainments for a wide range of social and economic strata, and not abstruse treatises for legal scholars. His expected goal would be to engage his audiences in matters that resonated with them and not to lose them in bewildering arcana. Still, one wonders how Shakespeare could write *King John* and not mention the enduring legacy of his reign and the cornerstone of English jurisprudence – the Magna Carta.

## ENDNOTES

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- <sup>1</sup> Macpherson, C.B. *The Political Theory of Possessive Individualism*. Oxford: Oxford University Press, 1962, p. 3.
- <sup>2</sup> Milsom, S.F.C. *Historical Foundations of the Common Law*. London: Butterworth, 1969, p. 88.
- <sup>3</sup> 2 Blackstone, William. *Commentaries on the Laws of England*. Chicago: The University of Chicago Press, 1979, p. 53. Shakespeare makes humorous use of homage when Viola dressed as Cesario says to Olivia in *Twelfth Night*: “I bring no overture of war, no taxation of homage.” (1.5.184-185) The message is that “he” does not expect anything from her such as the monetary exactions due after an oath of homage. The joke is in the reversal of genders as a result of Viola dressing as Cesario. Women rarely did homage and certainly never to another woman.
- <sup>4</sup> “[I]t is hard to escape the conclusion that in the 15<sup>th</sup> Century England displayed the characteristics of a stagnant and declining civilization. The fundamental trouble was a spiritual malaise induced by plague and general uncertainty; among the more important symptoms with the disintegration of society, the violence of public life, the decay of law and order, and the weakness of the crown.” Elton, G.R. *England Under the Tudors*. London: Methuen & Co., 1955, p. 9.
- <sup>5</sup> Elton, G.R. *England Under the Tudors*. London: Methuen & Co., 1955, p. 3.
- <sup>6</sup> Ford, Boris, Ed. *The Age of Shakespeare*. Baltimore: Penguin Books, 1955, p. 30, *et seq.*
- <sup>7</sup> The term “Elizabethan” is used broadly to encompass the sixteenth century even though the reign of Queen Elizabeth began in 1558. The Tudor era began with the reign of the first Tudor in 1485 and ended with the death of the last Tudor, Elizabeth, in 1603.
- <sup>8</sup> Bryson, Bill. *Shakespeare: The World as Stage*. New York: HarperCollins, 2007, p. 45.
- <sup>9</sup> Schoenbaum, S. *William Shakespeare: A Compact Documentary Life*. New York: Oxford University Press, 1977, p. 168.
- <sup>10</sup> Honan, Park. *Shakespeare: A Life*. Oxford: Oxford University Press, 1998, p. 100.
- <sup>11</sup> Honan, Park. *Shakespeare: A Life*. Oxford: Oxford University Press, 1998, p. 145.
- <sup>12</sup> Greenblatt, Stephen. *Will in the World: How Shakespeare Became Shakespeare*. New York: W.W. Norton & Company, 2004, p. 76 and Tillyard, E.M.W. *The Elizabethan*

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- World Picture*. New York: Vintage Books, N.d. The Tudor sumptuary laws were the most visible evidence of a hierarchical society. See Appendix B.
- <sup>13</sup> Although Copernicus's *De Revolutionibus Orbium Coelestium* was published in 1543, his heliocentric theory was not confirmed until the beginning of the seventeenth century by Johannes Kepler in 1609 and Galileo in 1610. Consequently Elizabethans adhered to the geocentrism of Ptolemy with the earth at the center and the sun and seven planets revolving around it. The sublunar space was mutable but the superlunar space was not. Astrology was revered as a science. The foremost astronomers Tycho Brahe (1546 – 1601) and Johannes Kepler (1571 – 1630) were astrologers. Other occult sciences – alchemy, numerology and magic – had wide followings.
- <sup>14</sup> Harrison, William. *Elizabethan England*. London: Walter Scott, n.d., is an invaluable tool for Elizabethan history – contemporary history and inventory of England first published as part of Holingshed's Chronicles during the reign of Elizabeth.
- <sup>15</sup> Foster, George M. "Peasant Society and the Image of Limited Good," 67 *Am. Anthropologist* 293 (1965), at 296.
- <sup>16</sup> I Henry VIII, ch. 14.
- <sup>17</sup> Hooper, Wilfred, "The Tudor Sumptuary Laws," 30 *Eng. Hist. Rev.* (July 1915), pp 433-449, and Cox, Noel, "Tudor Sumptuary Laws and Academical Dress: An Act Against Wearing of Costly Apparel" 1509 and "An Act for Reformation of Excess in Apparel" 1533, 2006 *Transactions of Burgor Society*, 6, pp. 15-43, which reprints the 1509 and 1533 acts in modernizing English. Cox and Hooper differ on the date of the 1509 act.
- <sup>18</sup> The sumptuary laws lend themselves to a Marxist analysis; see Goodrich, Peter, "Signs Taken for Wonders: Community, Identity and *A History of Sumptuary Law*" 23 *Law and So. Inquiry*, Summer 1998, pp 707-728, reviewing Alan Hunt's *Governance of the Consuming Passions: A History of Sumptuary Laws*.
- <sup>19</sup> 24 Henry VIII, ch. 13.
- <sup>20</sup> 1 James I, ch. 25.
- <sup>21</sup> The evidence is not clear but is related in Phillips, O. Hood. *Shakespeare and the Lawyers*. London: Methuen & Co., 1972, pp. 448-49.
- <sup>22</sup> Trevelyan, G.M. *A Shortened History of England*. London: Penguin Books, 1942, p. 204.
- <sup>23</sup> Smith, Lacey Baldwin. *This Realm of England: 1399 to 1688*. Boston: D.C. Heath and Company, 1966, p. 108.



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- <sup>24</sup> When Henry VIII dissolved the monasteries, the revenues due to Westminster (which was consecrated to St. Peter) were diverted to St. Paul's. The expression "robbing Peter to pay Paul" is often said to have originated then, but in fact the phrase occurs in John Wycliff's *Select English Works* (c. 1380), and appears in a twelfth century expression "As it were one would crucify Paul in order to redeem Peter."
- <sup>25</sup> Bentley, Gerald Eades. *Shakespeare, A Biographical Handbook*. New Haven: Yale University Press, 1961, p. 43.
- <sup>26</sup> Ackroyd, Peter. *Shakespeare The Biography*. New York: Random House, 2005, p. 114.
- <sup>27</sup> Millward, C.M. *A Biography of the English Language* (2<sup>nd</sup> ed.). Orlando: Harcourt Brace Jovanovich, 1996, p. 225; Greenblatt, Stephen. *Will in the World: How Shakespeare Became Shakespeare*. New York: W.W. Norton & Company, 2004, p. 91.
- <sup>28</sup> The term "War of the Roses" is a nineteenth century addition. The references to *roses* derive from *Henry VI* in which the Yorkists choose white roses and the Lancastrians red.
- <sup>29</sup> Elton, G.R. *England Under the Tudors*. London: Methuen & Co., 1955, p. 52.
- <sup>30</sup> Smith, Goldwin. *A History of England*. New York: Charles Scribner's Sons, 1957, p. 193.
- <sup>31</sup> Smith, Goldwin. *A History of England*. New York: Charles Scribner's Sons, 1957, p. 192.
- <sup>32</sup> Sheppard, Francis. *London: A History*. Oxford: Oxford University Press, 1998, p. 174.
- <sup>33</sup> Smith, Lacey Baldwin. *This Realm of England: 1399 to 1688*. Boston: D.C. Heath and Company, 1966, p. 111.
- <sup>34</sup> The story is fully told in Price, Mary R. and C.E.L. Mather. *A Portrait of Brittan Under the Tudors and Stuarts 1485-1688*. Oxford: Clarendon Press, 1954, pp. 75-90, and L.B. Smith, page 179, *et seq.*
- <sup>35</sup> Holland, Peter. *William Shakespeare*. Oxford: Oxford University Press, 2007, p. 116.
- <sup>36</sup> Harrison, G.B. *Introducing Shakespeare*. Harmondsworth, England: Penguin Books Limited, N.d., p. 35.
- <sup>37</sup> Smith, Lacey Baldwin. *This Realm of England: 1399 to 1688*. Boston: D.C. Heath and Company, 1966, p. 156.

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- <sup>38</sup> Trevelyan, G.M. *England Under the Stuarts*. New York: Barnes and Noble., 1904, 1949, 1965, ch. 3.
- <sup>39</sup> Wardship was the crown's lucrative ability to control the marriages of his deceased underlords' minor children.
- <sup>40</sup> Smith, Lacey Baldwin. *This Realm of England: 1399 to 1688*. Boston: D.C. Heath and Company, 1966, p. 202.
- <sup>41</sup> Smith, Lacey Baldwin. *This Realm of England: 1399 to 1688*. Boston: D.C. Heath and Company, 1966, p. 203.
- <sup>42</sup> Schoenbaum, S. *William Shakespeare: A Compact Documentary Life*. New York: Oxford University Press, 1977, p. 281.
- <sup>43</sup> Hardin, Garrett, "The Tragedy of the Commons," *Science*, Vol. 162, p. 1243 (December 13, 1968).
- <sup>44</sup> Trevelyan, G.M. *English Social History*. London: Longmans, Green and Co., 1942.
- <sup>45</sup> Bridenbaugh, Carl. *Vexed and Troubled Englishmen 1590-1642*. London: Oxford University Press, 1967 at p. 98.
- <sup>46</sup> More, Thomas. *Utopia*, trans. Clarence H. Miller. New Haven: Yale University Press, 2001, p. 22.
- <sup>47</sup> Burt, Richard and John Michael Archer, eds. *Enclosure Acts: Sexuality, Property and Culture in Early Modern England*, Ithaca, NY: Cornell University Press, 1994, explores the notion of enclosure in the sense of confinement or circumscription in several contexts.
- <sup>48</sup> Plucknett, Theodore F.T. *A Concise History of the Common Law (5<sup>th</sup> ed.)*. Boston: Little, Brown and Company, 1956, p. 177.
- <sup>49</sup> Ackroyd, Peter. *Shakespeare The Biography*. New York: Random House, 2005, p. 34. The land law is just one of the legal topics that Shakespeare addresses. See Appendix A.
- <sup>50</sup> 18 Edw.I, ch. 1.
- <sup>51</sup> Simpson, A.W.B. *An Introduction to the History of the Land Law*. Oxford: Oxford University Press, 1961, p. 51.
- <sup>52</sup> Cantor, Norman F. *Imagining the Law*. New York: HarperCollins, 1997, p. 204.
- <sup>53</sup> Stat. Westminster II, ch. 1.

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- <sup>54</sup> The common recovery and fine processes are described in detail in Underhill, Arthur. *Law*. In *Shakespeare's England: An Account of the Life and Manners of His Age* (pp. 381-412). Oxford: Clarendon Press, 1916.
- <sup>55</sup> Clarkson, Paul S. and Clyde T. Warren. *The Law of Property in Shakespeare and the Elizabethan Drama*. Baltimore: The Johns Hopkins Press, 1942, p. 135.
- <sup>56</sup> 27 Henry VIII, ch. 10.
- <sup>57</sup> Holdsworth, William. *A Historical Introduction to the Land Law*. London: Oxford University Press, 1927, p. 151.
- <sup>58</sup> 27 Henry VIII, c. 16.
- <sup>59</sup> 1 Co. Rep. 93(b) 1581.
- <sup>60</sup> Davis, C.K. *The Law in Shakespeare*. Washington, D.C.: Washington Law Book Co., 1883, pp. 267-268.
- <sup>61</sup> See Keeton, George W. *Shakespeare's Legal & Political Background*. London: Sir Isaac Pitman & Sons, 1967, ch. 12.
- <sup>62</sup> Keeton, George W. *Shakespeare's Legal & Political Background*. London: Sir Isaac Pitman & Sons, 1967, p. 186. This rule was relaxed by 4 Geo. IV, ch. 52 which allowed suicides to be buried in a churchyard between 9 p.m. and midnight within twenty-four hours after the end of the inquisition but without burial rites.
- <sup>63</sup> 1 Plowden 253.
- <sup>64</sup> *Puisne* is the root of "puny" which is its phonetic spelling. In turn, they come from *L. post* (later) and *natus* (born), and in original and legal usage mean "inferior" or "subordinate."
- <sup>65</sup> Davis, C.K. *The Law in Shakespeare*. Washington, D.C.: Washington Law Book Co., 1883, p. 265.
- <sup>66</sup> For a feminist critique of *Hales v. Petit*, see "Sale, Carolyn, "The Amending Hand *Hales v. Petit*, *Eyston v. Studd*, and Equitable Action in *Hamlet*" in Jordon, Constance and Karen Cunningham, eds. *The Law in Shakespeare*. London: Palgrave MacMillan, 2007. pp. 189-205.
- <sup>67</sup> *Hales v. Petyt* (1562), in 1 *Reports From The Lost Notebooks Of Sir James Dyer* 72, 75 (J.H. Baker ed.) (1994).  
[http://www.shakespearefellowship.org/virtualclassroom/Law/regnier.htm#\\_ednref360](http://www.shakespearefellowship.org/virtualclassroom/Law/regnier.htm#_ednref360)
- <sup>68</sup> [www.guardian.co.uk/culture/2011/jun/08/shakespeare-re-ophelia-link](http://www.guardian.co.uk/culture/2011/jun/08/shakespeare-re-ophelia-link)

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- <sup>69</sup> Chambers, E.K. *William Shakespeare: A Study of Facts and Problems* (2 Vols.). Oxford: Clarendon Press, 1930, vol. II, p. 4. Phillips, O. Hood. *Shakespeare and the Lawyers*. London: Methuen & Co., 1972, p. 36; Keeton, George W. *Shakespeare's Legal & Political Background*. London: Sir Isaac Pitman & Sons, 1967, pp. 190-191.
- <sup>70</sup> In Shakespeare scholarship, the "lost years" are the most of his twenties<sup>70</sup> from the christening of his twins in 1585 to the first mention of him as a player in London in 1592.
- <sup>71</sup> Honan, Park. *Shakespeare: A Life*. Oxford: Oxford University Press, 1998, p. 96.
- <sup>72</sup> Burgess, Anthony. *Shakespeare*. New York: Barnes & Noble Publishing, 2006, p. 65.
- <sup>73</sup> Honan, Park. *Shakespeare: A Life*. Oxford: Oxford University Press, 1998, p. 121.
- <sup>74</sup> Bentley, Gerald Eades. *Shakespeare, A Biographical Handbook*. New Haven: Yale University Press, 1961, p. 71; Chambers, E.K. *William Shakespeare: A Study of Facts and Problems* (2 Vols.). Oxford: Clarendon Press, 1930, p. 54.
- <sup>75</sup> Ackroyd, Peter. *Shakespeare: The Biography*. New York: Random House, 2005, p. 420.
- <sup>76</sup> Schoenbaum, S. *William Shakespeare: A Compact Documentary Life*. New York: Oxford University Press, 1977, p. 260.
- <sup>77</sup> Hodges, C. Walter. *Shakespeare and the Players*. New York: Coward-McCann, 1958, p. 23.
- <sup>78</sup> XIV Eliz., ch. 5.
- <sup>79</sup> Greenblatt, Stephen. *Will in the World: How Shakespeare Became Shakespeare*. New York: W.W. Norton & Company, 2004, p. 88.
- <sup>80</sup> Stoker, Bram. "The American 'Tramp' Question and the Old English Vagrancy Laws," 190 N. Am. Rev. 605 (Nov. 1909).
- <sup>81</sup> Chambers, E.K. *William Shakespeare: A Study of Facts and Problems* (2 Vols.). Oxford: Clarendon Press, 1930, p. 57.
- <sup>82</sup> Schoenbaum, S. *William Shakespeare: A Compact Documentary Life*. New York: Oxford University Press, 1977, p. 253.
- <sup>83</sup> Bentley, Gerald Eades. *Shakespeare, A Biographical Handbook*. New Haven: Yale University Press, 1961, p. 88.
- <sup>84</sup> In 1594 the Curtain Theatre was erected near the Theatre, and the Rose was built on Bankside, a suburb on the south side of the London Bridge.

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- <sup>85</sup> The daily wage in Elizabethan times would have been about one shilling.<sup>85</sup> The estimates of Shakespeare's annual income vary from £200 to £700,<sup>85</sup> with the weight of authority leaning toward the lower end.<sup>85</sup> Several historians agree that a £1,000 in Elizabethan times would translate approximately to £500,000 in modern money<sup>85</sup> for a five hundred fold inflation in four hundred years. The Oxford Companion to Shakespeare concluded: "One of the most difficult, and dangerous, of scholarly endeavours is the attempted conversion of currency valuations from one time to another. The problem with such an endeavour is that standards of living, desires, practices, available goods – in a word, life itself – differ so greatly from one period to another that we are left acknowledging the essentially untranslatable nature of value."<sup>85</sup> There are several reasons for this difficulty: many commodities such as bread or fruit were baked or grown at home; technological innovations have made the production of some goods much cheaper; a cash economy was more common in urban areas than rural ones where barter was quite common; and inflation has changed the relation of prices and wages.
- <sup>86</sup> Bentley, Gerald Eades. *Shakespeare, A Biographical Handbook*. New Haven: Yale University Press, 1961, p. 115.
- <sup>87</sup> Ackroyd, Peter. *Shakespeare The Biography*. New York: Random House, 2005, p. 465.
- <sup>88</sup> Honan, Park. *Shakespeare: A Life*. Oxford: Oxford University Press, 1998, p. 267.
- <sup>89</sup> Bentley, Gerald Eades. *Shakespeare, A Biographical Handbook*. New Haven: Yale University Press, 1961, p. 102.
- <sup>90</sup> Gurr, Andrew with John Orrell. *Rebuilding Shakespeare's Globe*. New York: Routledge, 1989, p. 22.
- <sup>91</sup> A great deal of research has been devoted to the shape – circular or polygonal. The conclusion – largely driven by the reality of timber construction – is polygonal. See Gurr, Andrew with John Orrell. *Rebuilding Shakespeare's Globe*. New York: Routledge, 1989, ch. 3 for a thorough discussion.
- <sup>92</sup> Larouque, Francois. *The Age of Shakespeare*. New York: Harry N. Abrams, 1993, p. 65.
- <sup>93</sup> Harrison, G.B. *Introducing Shakespeare*. Harmondsworth, England: Penguin Books Limited, N.d., p. 94.
- <sup>94</sup> Hodges, C. Walter. *Shakespeare and the Players*. New York: Coward-McCann, 1958, p. 57.
- <sup>95</sup> Greenblatt, Stephen. *Will in the World: How Shakespeare Became Shakespeare*. New York: W.W. Norton & Company, 2004, p. 380.

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- <sup>96</sup> See Scott, William O. "Like to a Tenement: Landholding, Leasing, and Inheritance in *Richard II*" in Jordon & Cunningham 58-72.
- <sup>97</sup> Bentley, Gerald Eades. *Shakespeare, A Biographical Handbook*. New Haven: Yale University Press, 1961, p. 115.
- <sup>98</sup> Gurr, Andrew with John Orrell. *Rebuilding Shakespeare's Globe*. New York: Routledge, 1989, p. 59.
- <sup>99</sup> Schoenbaum, S. *William Shakespeare: A Compact Documentary Life*. New York: Oxford University Press, 1977, p. 265.
- <sup>100</sup> Ackroyd, Peter. *Shakespeare The Biography*. New York: Random House, 2005, p. 359.
- <sup>101</sup> Kermode, Frank. *The Age of Shakespeare*. New York: The Modern Library, 2005, p. 178.
- <sup>102</sup> "Shakespeare's birthplace" on Henley Street was "established" in the eighteenth century and is not certain.
- <sup>103</sup> Kermode, Frank. *The Age of Shakespeare*. New York: The Modern Library, 2005, p. 123.
- <sup>104</sup> Chambers, E.K. *William Shakespeare: A Study of Facts and Problems* (2 Vols.). Oxford: Clarendon Press, 1930, vol 2, p. 5.2
- <sup>105</sup> See 2 Blackstone, William. *Commentaries on the Laws of England*. Chicago: The University of Chicago Press, 1979, ch. 14 for a full discussion.
- <sup>106</sup> Schoenbaum, S. *William Shakespeare: A Compact Documentary Life*. New York: Oxford University Press, 1977, p. 232.
- <sup>107</sup> Chambers, E.K. *William Shakespeare: A Study of Facts and Problems* (2 Vols.). Oxford: Clarendon Press, 1930, p. 53.
- <sup>108</sup> Ackroyd, Peter. *Shakespeare The Biography*. New York: Random House, 2005, p. 324.
- <sup>109</sup> Honan, Park. *Shakespeare: A Life*. Oxford: Oxford University Press, 1998, p. 237.
- <sup>110</sup> Schoenbaum, S. *William Shakespeare: A Compact Documentary Life*. New York: Oxford University Press, 1977, p. 234.
- <sup>111</sup> Phillips, O. Hood. *Shakespeare and the Lawyers*. London: Methuen & Co., 1972, pp. 6-7.

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- <sup>112</sup> A fee-farm was fee simple estate at a perpetual fixed rent.<sup>112</sup> Shakespeare's mention of it occurs when Pandarus encourages Troilus to kiss Cressida. He marvels "How now, a kiss in fee-farm!" (*Troilus and Cressida* 3.2.48), presumably to indicate its duration or their enduring love, or perhaps that neither lover owed any further services.<sup>112</sup> In *Richard II*, John of Gaunt makes a derogatory comment about "farms," as does the Captain in *Hamlet* when speaking of Poland.
- <sup>113</sup> Ackroyd, Peter. *Shakespeare The Biography*. New York: Random House, 2005, p. 495.
- <sup>114</sup> Honan, Park. *Shakespeare: A Life*. Oxford: Oxford University Press, 1998, p. 379.
- <sup>115</sup> Chambers, E.K. *William Shakespeare: A Study of Facts and Problems* (2 Vols.). Oxford: Clarendon Press, 1930, p. 63. There is a great deal of confusion in the original documents with respect to the names of the grantees in this transaction – not to mention the usual vagaries in Elizabethan spelling.
- <sup>116</sup> Bentley, Gerald Eades. *Shakespeare, A Biographical Handbook*. New Haven: Yale University Press, 1961, p. 82.
- <sup>117</sup> Gertrude is called "Th' imperial jointress of this warlike state," *Hamlet*, 1.2.9, although the marriage to her former brother-in-law Claudius might have been considered adulterous.
- <sup>118</sup> Honan, Park. *Shakespeare: A Life*. Oxford: Oxford University Press, 1998, p. 379.
- <sup>119</sup> Schoenbaum, S. *William Shakespeare: A Compact Documentary Life*. New York: Oxford University Press, 1977, p. 273.
- <sup>120</sup> Schoenbaum, S. *William Shakespeare: A Compact Documentary Life*. New York: Oxford University Press, 1977, p. 246.
- <sup>121</sup> Harrison, G.B. *Introducing Shakespeare*. Harmondsworth, England: Penguin Books Limited, N.d., p. 42.
- <sup>122</sup> Bentley, Gerald Eades. *Shakespeare, A Biographical Handbook*. New Haven: Yale University Press, 1961, p. 43.
- <sup>123</sup> Honan, Park. *Shakespeare: A Life*. Oxford: Oxford University Press, 1998, p. 385.
- <sup>124</sup> Schoenbaum, S. *William Shakespeare: A Compact Documentary Life*. New York: Oxford University Press, 1977, p. 281.
- <sup>125</sup> An effort to enclose these lands undertaken by Sir Edward Greville, Lord of the Manor of Stratford in 1601 had been unsuccessful after six Stratford aldermen, including Richard Quiney, had leveled the hedges that purported to enclose the lands.

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- <sup>126</sup> Honan, Park. *Shakespeare: A Life*. Oxford: Oxford University Press, 1998, p. 386.
- <sup>127</sup> Chambers, E.K. *William Shakespeare: A Study of Facts and Problems* (2 Vols.). Oxford: Clarendon Press, 1930, vol. 2, pp. 141-52 explains the matter thoroughly. See also Schoenbaum, S. *William Shakespeare: A Compact Documentary Life*. New York: Oxford University Press, 1977, p. 285.
- <sup>128</sup> Chambers, E.K. *William Shakespeare: A Study of Facts and Problems* (2 Vols.). Oxford: Clarendon Press, 1930, pp. 2.101-2; Greenblatt, Stephen. *Will in the World: How Shakespeare Became Shakespeare*. New York: W.W. Norton & Company, 2004, p. 364.
- <sup>129</sup> Chambers, E.K. *William Shakespeare: A Study of Facts and Problems* (2 Vols.). Oxford: Clarendon Press, 1930, p. 154.
- <sup>130</sup> Schoenbaum, S. *William Shakespeare: A Compact Documentary Life*. New York: Oxford University Press, 1977, p. 246.
- <sup>131</sup> Chambers, E.K. *William Shakespeare: A Study of Facts and Problems* (2 Vols.). Oxford: Clarendon Press, 1930, vol. 2, pp. 111-13.
- <sup>132</sup> See Clarkson, Paul S. and Clyde T. Warren. *The Law of Property in Shakespeare and the Elizabethan Drama*. Baltimore: The Johns Hopkins Press, 1942, p. 44 *et seq.* and Phillips, O. Hood. *Shakespeare and the Lawyers*. London: Methuen & Co., 1972, p. 128.
- <sup>133</sup> Chambers, E.K. *William Shakespeare: A Study of Facts and Problems* (2 Vols.). Oxford: Clarendon Press, 1930, vol. 2, pp. 99-101.
- <sup>134</sup> Holland, Peter. *William Shakespeare*. Oxford: Oxford University Press, 2007, p. 60.
- <sup>135</sup> Frye, Roland Mushat. *Shakespeare's Life and Times: A Pictorial Record*. Princeton: Princeton University Press, 1967, Section 112.
- <sup>136</sup> Chambers, E.K. *William Shakespeare: A Study of Facts and Problems* (2 Vols.). Oxford: Clarendon Press, 1930, p. 166; Bentley, Gerald Eades. *Shakespeare, A Biographical Handbook*. New Haven, CT: Yale University Press, 1961, p. 153. The others are on the Blackfriars deed, the Blackfriars mortgage, and the disposition in the Mountjoy-Belott suit.
- <sup>137</sup> Schoenbaum, S. *William Shakespeare: A Compact Documentary Life*. New York: Oxford University Press, 1977, p. 297.
- <sup>138</sup> Ackroyd, Peter. *Shakespeare The Biography*. New York: Random House, 2005, p. 512.



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- <sup>139</sup> Bentley, Gerald Eades. *Shakespeare, A Biographical Handbook*. New Haven: Yale University Press, 1961, p. 57.
- <sup>140</sup> Bentley, Gerald Eades. *Shakespeare, A Biographical Handbook*. New Haven: Yale University Press, 1961, p. 154.
- <sup>141</sup> Schoenbaum, S. *William Shakespeare: A Compact Documentary Life*. New York: Oxford University Press, 1977, p. 301.
- <sup>142</sup> Simpson, A.W.B. *An Introduction to the History of the Land Law*. Oxford: Oxford University Press, 1961, p. 65.
- <sup>143</sup> Davis, C.K. *The Law in Shakespeare*. Washington, D.C.: Washington Law Book Co., 1883, p. 246.
- <sup>144</sup> Dawson, John P., "Coke and Ellesmere Disinterred: The Attack on the Chancery in 1616." 36 Ill. L.R. of Northwestern U. 127 (1941).
- <sup>145</sup> Holdsworth, William. *A Historical Introduction to the Land Law*. London: Oxford University Press, 1927, p. 147.
- <sup>146</sup> Milsom, S.F.C. *Historical Foundations of the Common Law*. London: Butterworth, 1969, p. 83.
- <sup>147</sup> Milsom, S.F.C. *Historical Foundations of the Common Law*. London: Butterworth, 1969, p. 74 *et seq.* tells the story very well.
- <sup>148</sup> 3 *Inst.* 54.
- <sup>149</sup> 16 Richard 2, ch. 5.
- <sup>150</sup> 3 *Inst.* 54.
- <sup>151</sup> 4 Henry IV, ch. 23 in Dawson, John P., "Coke and Ellesmere Disinterred: The Attack on the Chancery in 1616," 36 Ill. L. R. of Northwestern U., 127 at 132.
- <sup>152</sup> Phelps, Charles E. *Falstaff and Equity: An Interpretation*. Boston: Houghton, Mifflin and Company, 1901, p. 46.
- <sup>153</sup> 3 *Inst.* 124, 4 *Inst.* 86.
- <sup>154</sup> 3 *Inst.* 124.
- <sup>155</sup> Phelps, Charles E. *Falstaff and Equity: An Interpretation*. Boston: Houghton, Mifflin and Company, 1901, p. 42.
- <sup>156</sup> 1 ch. Rep. 1; 2 Lead. Ca. in Eq. 601.

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- <sup>157</sup> This reference is discussed at length by Judge Phelps in Falstaff and Equity: An Interpretation.
- <sup>158</sup> Ackroyd, Peter. *Shakespeare The Biography*. New York: Random House, 2005, p. 70.
- <sup>159</sup> In *William Shakespeare: The Anatomy of an Enigma*. London: Caliban Books, 1990, Peter Razzell argues that John Shakespeare was disingenuous in this litigation.
- <sup>160</sup> Trevelyan, G.M. *English Social History*. London: Longmans, Green and Co., 1942, p. 190.
- <sup>161</sup> Trevelyan, G.M. *English Social History*. London: Longmans, Green and Co., 1942, p. 192.
- <sup>162</sup> Price, Mary R. and C.E.L. Mather. *A Portrait of Brittan Under the Tudors and Stuarts 1485-1688*. Oxford: Clarendon Press, 1954, p. 15 *et seq.*
- <sup>163</sup> Trevelyan, G.M. *A Shortened History of England*. London: Penguin Books, 1942, p. 206.
- <sup>164</sup> Trevelyan, G.M. *A Shortened History of England*. London: Penguin Books, 1942, p. 232.
- <sup>165</sup> Elton, Geoffrey. *The English*. Oxford: Blackwell Publishers, 1992, p. 113.
- <sup>166</sup> The disputed authorship is told well in Shapiro, James. *Contested Will: Who Wrote Shakespeare?* New York: Simon & Schuster, 2010
- <sup>167</sup> Nolen, Stephanie. *Shakespeare's Face*. New York: Simon & Schuster, 2002, p. 104
- <sup>168</sup> Martin, Milward. *A Biography of the English Language (2<sup>nd</sup> ed.)*. Orlando: Harcourt Brace Jovanovich, 1996, p. 115
- <sup>169</sup> McCrum, Robert, William Cran, and Robert MacNeil. *The Story of English*. New York: Penguin Books, 1986, p. 101
- <sup>170</sup> Davis, C.K. *The Law in Shakespeare*. Washington, D.C.: Washington Law Book Co., 1883, pp. 37-8.
- <sup>171</sup> Phelps, Charles E. *Falstaff and Equity: An Interpretation*. Boston: Houghton, Mifflin and Company, 1901, p. 91
- <sup>172</sup> Nolen, Stephanie. *Shakespeare's Face*. New York: Simon & Schuster, 2002, p. 106

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- <sup>173</sup> Millward, C.M. *Was Shakespeare Shakespeare?* New York: Cooper Square Publishers, 1965, p. 6
- <sup>174</sup> Burgess, Anthony. *Shakespeare*. New York: Barnes & Noble Publishing, 2006, p. 38
- <sup>175</sup> See Lardner, James, "The Authorship Question," *New Yorker* (April 11, 1988), 87-106 for an account of the proceedings with particular attention to the Oxfordians.
- <sup>176</sup> *Wall Street Journal*, April 18, 2009, reported that the Justices that have expressed an opinion are evenly divided between Shakespeare and Oxford.
- <sup>177</sup> [www.pbs](http://www.pbs.org)
- <sup>178</sup> Larouque, Francois. *The Age of Shakespeare*. New York: Harry N. Abrams, 1993, p. 84.
- <sup>179</sup> Ackroyd, Peter. *Shakespeare The Biography*. New York: Random House, 2005, p. 331
- <sup>180</sup> Chambers, E.K. *William Shakespeare: A Study of Facts and Problems* (2 Vols.). Oxford: Clarendon Press, 1930, p. 83
- <sup>181</sup> Bryson, Bill. *Shakespeare: The World as Stage*. New York: HarperCollins, 2007, p. 193; Bentley, Gerald Eades. *Shakespeare, A Biographical Handbook*. New Haven: Yale University Press, 1961, p. 16
- <sup>182</sup> Larouque, Francois. *The Age of Shakespeare*. New York: Harry N. Abrams, 1993, p. 87
- <sup>183</sup> Quoted in Shapiro, James. *Contested Will: Who Wrote Shakespeare?* New York: Simon & Schuster, 2010, p. 132
- <sup>184</sup> Shapiro, James. *Contested Will: Who Wrote Shakespeare?* New York: Simon & Schuster, 2010, p. 40
- <sup>185</sup> Cited in Clarkson, Paul S. and Clyde T. Warren. *The Law of Property in Shakespeare and the Elizabethan Drama*. Baltimore: The Johns Hopkins Press, 1942, p. xviii
- <sup>186</sup> London: Longman Brown Green Longmans and Roberts
- <sup>187</sup> at 50
- <sup>188</sup> Rushton, William Lowes. *Shakespeare's Legal Maxims*. Liverpoos: Henry Young & Sons, 1907, p. 61
- <sup>189</sup> New York, D. Appleton and Company, 1859

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- <sup>190</sup> Phillips, O. Hood. *Shakespeare and the Lawyers*. London: Methuen & Co., 1972, p. 178
- <sup>191</sup> at 9
- <sup>192</sup> Rushton, *Shakespeare's Legal Maxims*, "several mistakes in law," at p. 11
- <sup>193</sup> London: Faber & Gwyer Limited 1929
- <sup>194</sup> at 144
- <sup>195</sup> The "allusions [to mortgages] do not reveal any profound legal knowledge.
- <sup>196</sup> The rules of jointure would have been "known to the public generally," and the references to co-ownership are "numerous and unimportant."
- <sup>197</sup> These uses are merely the sense of "shared," and have been called "superficial."
- <sup>198</sup> Clarkson, Paul S. and Clyde T. Warren. *The Law of Property in Shakespeare and the Elizabethan Drama*. Baltimore: The Johns Hopkins Press, 1942, p. 55.
- <sup>199</sup> Clarkson, Paul S. and Clyde T. Warren. *The Law of Property in Shakespeare and the Elizabethan Drama*. Baltimore: The Johns Hopkins Press, 1942, p. 231.
- <sup>200</sup> Clarkson, Paul S. and Clyde T. Warren. *The Law of Property in Shakespeare and the Elizabethan Drama*. Baltimore: The Johns Hopkins Press, 1942, p. 286
- <sup>201</sup> White, Edward J. *Commentaries on the Law in Shakespeare*. St. Louis: The F.H. Thomas Law Book Co., 1911, p. 480
- <sup>202</sup> Underhill, Arthur. "Law." In *Shakespeare's England: An Account of the Life and Manners of His Age*. Oxford: Clarendon Press, 1916, p. 381
- <sup>203</sup> Phelps, Charles E. *Falstaff and Equity: An Interpretation*. Boston: Houghton, Mifflin and Company, 1901, p. 103
- <sup>204</sup> Sokol, B.J. and Mary Sokol. *Shakespeare's Legal Language*. London: Continuum, 2004, p. 3
- <sup>205</sup> Davis, C.K. *The Law in Shakespeare*. Washington, D.C.: Washington Law Book Co., 1883, p. 59
- <sup>206</sup> Clarkson, Paul S. and Clyde T. Warren. *The Law of Property in Shakespeare and the Elizabethan Drama*. Baltimore: The Johns Hopkins Press, 1942, p. 285
- <sup>207</sup> Clarkson, Paul S. and Clyde T. Warren. *The Law of Property in Shakespeare and the Elizabethan Drama*. Baltimore: The Johns Hopkins Press, 1942, p. 285

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- <sup>208</sup> Keeton, George W. *Shakespeare's Legal & Political Background*. London: Sir Isaac Pitman & Sons, 1967, p. 9
- <sup>209</sup> Phillips, O. Hood. *Shakespeare and the Lawyers*. London: Methuen & Co., 1972, p. 84
- <sup>210</sup> Underhill, Arthur. "Law." In *Shakespeare's England: An Account of the Life and Manners of His Age*. Oxford: Clarendon Press, 1916, p. 382

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